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I N D I A  
Social and Political

*By*

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## PREFACE

This book now presented before the public contains a description of the social and political conditions of India and shows the course of her evolution. At the same time it is a study of all the relevant topics connected with the main subject and is intended to convey to the reader a complete idea of the cultural growth of this country. It is particularly suited to the needs of students taking a course in Indian civics.

While dealing with the administrative structure of the country special care has been taken to show clearly the position obtaining at present and that to be found after coming into operation of the Government of India Act of 1935. The provisions of this new Act have been given in italics.

## TRANSLITERATION

A word about transliteration appears to be necessary. Special notations have been used to make the pronunciation of oriental words quite clear. Ordinarily the following notations have been adopted for vowel sounds —

a=अ, ā=आ, i=इ, ī=ई, u=उ, ū=ऊ, e=ए, ai=ऐ, o=ओ, au=औ,

The consonants have their usual pronunciation except as indicated below. —

d=द, ḍ=ड, dh=ध, ḍh=ढ, gh=ग, kh=ख, n=न, ṇ=ण, ṇ̄=न्, ṇ̄=न्, q=ज, ṇ̄=ञ, r=र, s=ष, ṣ=स, ṣh=श, t=त, ṭ=ट, th=थ, tḥ=ठ

But such names, historical or geographical, as are generally written in one particular way and involve no ambiguity as to their pronunciation, have been usually written in that way and diacritical marks have been used only occasionally as necessary.

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## *Social and Cultural Evolution*

### *The Subject*

India is a land of ancient civilisation and her people can justly be proud of a high stage of social and individual attainments. Her heritage is great, glorious and dignified and the level of her cultural evolution marvellously high. It would be simply impossible within the small scope of this chapter to give even in brief any adequate idea of the growth of her civilization and we must content ourselves with noting very briefly some of the important features of her culture in order to understand the present social life of her people.

### *The Unity of Culture*

It has been often remarked that India is a continent and not a country, meaning thereby that the geographical extent of her territories is great and the people inhabiting it belong to different races, following different religions, and speaking different languages. There is no denying this fact and we further observe that there are great differences even in the modes of life of the people of different parts of this vast country. Nevertheless, the student of culture and civilization very easily finds, in spite of the superficial differences that first attract the eye, that India as a whole possesses one culture and one civilization. This unity has remained unbroken throughout the long ages of her history. It has been a marked characteristic of her culture that she has been able to assimilate the various types of culture which were introduced into the country from time to time by

foreigners coming into, inhabiting or even conquering, its territories.

The central feature of this civilization is Aryan around which other forms have been associated according to their proper places. This Aryan element in her civilization has always been and still is the most predominating factor in the development of her culture. The social institutions which the Aryans established in the very beginning have continued in essence even upto the modern times and have only been modified from time to time as necessity has arisen. It is rather strange to observe that India which is reputed to be one of the most conservative countries of the world has very peacefully adopted certain features of other civilizations which proved useful or were found necessary. It stands to her credit that even in the furtherance of religious cause or spread of various religions she has not witnessed the horrors of war so common in other countries. She has adapted herself to the growing needs of all times and has succeeded in effecting marvellous religious revolutions peacefully and even without seriously affecting the life of her people.<sup>1</sup> The fundamental unity of her culture has been throughout maintained.

### *Its Consistency*

It is important to realise that the credit of discovering this unity in Indian social and cultural life does not belong to the

<sup>1</sup> For example the spread of Buddhism throughout the country and even outside, superseding the prevalent Vedic religion or again the revival of Hinduism and almost complete extermination of Buddhism. The introduction of Islam was undoubtedly attended with some troubles and conflicts but considering the seriousness of the situation and comparing with other countries they are minor and almost negligible. The introduction of Christianity has also been peaceful. At present those various religions have to their credit certain features of her social life but that life has not lost its unity or its fundamental basis.

student of history and civilization, for such a consciousness has been a common feature of her prevailing life. From almost the very beginning of civilized history India as a whole has been feeling one and her people, even the masses, have been conscious of this unity. Even in their day-to-day life they recite verses, when performing ordinary religious rites, which make them constantly conscious that the whole of India has been regarded as one and its various cities and rivers should be looked upon by all as forming links in a chain. Again the Indian pilgrims who want to visit the holy places have to go from one corner of the country to another and from province to province to complete their journey, and this has been going on since long before the invention of railways which facilitated the work of passengers. This has certainly bound her people by common ties in one conscious whole. In this connection, it is also worthy of note that as far as the life beneath the surface is concerned, it is the same or similar in all parts of the country and despite the differences of language and even of religion the common features are predominantly great and many. This may be most easily observed in common popular songs, food, clothing, household articles and religious, ethical or political ideas of the common people.

#### *Social Structure—Wholeness of life Dharma*

In this place only a few aspects of Indian social life can be very summarily noticed which may just give to the reader an outline of India's social structure. One of the most important characteristics of Indian life is the conception of wholeness of life. Indian thought regards life as one complete whole and approaches its goal in a synthetic manner. It does not understand life in its separate water-tight compartments. For example, it will not allow a division of life in a private and

public or a division into various classes of duties in which different standards of morality may prevail. It believes in one comprehensive idea of Dharma which cannot be lost sight of in any sphere of life. It is this Dharma which will tell a man how he should offer his prayers to God, how he should deal with the king, how he should treat his relatives, or behave with his servants, how he should welcome his guests, and so on. Similarly the division between the state and the church or between the economic and moral aspects of life is not a marked one. All spring from the same Dharma and the king has to obey it just as his subjects have to, and it regulates the economic life as much as the moral life.

#### *Cosmopolitan Outlook*

Another very important characteristic of Indian Life is its cosmopolitan outlook. It is particularly noteworthy that Indian thought judges the eternal worth of a man by the virtues he possesses and the type of ethical standard he maintains in his life and not by the sex to which he belongs, the country which he inhabits, or the religion which he professes. It regards one's 'karma' (actions) as the criterion of one's real worth. According to this idea the Indian society will regard as low a low class man of its own fold as much as a member of an alien race doing the same or similar business. It will not have the particularity to regard any of its own members as higher than a member of foreign society simply because of the former being its own member.

#### *Social Institutions, the Caste System*

Bearing these facts in mind, we may notice a few social institutions which have played an important part in the Indian life. Such an institution is that of the caste. It is a much

debated question as to how far the caste system was or at the present day is an evil. Without, however, going into the question at length, we may merely notice certain important aspects of the system.

The organization of caste is essentially a division of society into various classes according to the profession or occupation of the members. Broadly speaking, powers at the command of society have been divided into those of (1) learning and mental or spiritual strength, (2) physical strength, (3) wealth, (4) physical service and manual labour. These powers have been given to different classes, commonly known as Brahmana, Kshatriya, Vaishya and Śūdra, whose rank has been determined by the powers they possess. It is important to remember that the power of money has been placed very low in the rank. In the modern times in Western countries, the power of money has grown to vast proportions and is able to command almost all other powers. This is an important difference between the two types of organization.

Another important feature of the caste system is the present standard of determining one's caste. Somehow or other, this standard has now come to be one's birth. The standard of 'karma' seems to have definitely gone to the background. This has apparently resulted in gross injustices being done to various persons and classes of persons. It has deprived many an able man of his right to rise higher in society and has prevented lots of people of the lower castes from achieving success and being serviceable to humanity at large without any fault of theirs. At the same time, it has tended to restrict education and to encourage the high caste people to live, in practice, the life of low caste people and still have the vanity or audacity to call themselves high-caste people. So that as a matter of fact a deplorable state of affairs has developed in the caste system.

Another important feature of this system is the organization of the various castes as units of society. It may be generally remarked that a caste itself is a highly democratic association. It maintains no distinction of high and low, rich and poor, educated and uneducated, etc. All belong to one brotherhood and have the same rights. From the point of view of efficiency of organization, some of the castes have displayed a marvellous development. The caste *pañchayat* has been in many places a very strong force for mending the life of its caste-men and has been often known to dispense justice very properly and efficiently.

The last feature to be noticed is the principle of dining and marriage. Inter-dining and inter-marriage are not allowed according to the caste rules. However, important changes are now visible affecting this organisation both as a result of the efforts of social and religious reformers and of state activities.

Having thus seen some of the important features of the caste system, it is necessary to observe that this organization has spread throughout the country and is to be found in all the provinces. It is essentially an institution of the Hindu society, but can be traced to be existing in some measure or other even among other communities.

### *The Joint Family*

The institution of joint family is another very important one from many points of view. The joint family is essentially an economic unit of society<sup>2</sup> and from the ethical point of view is a training ground for social and political virtues. It teaches a small group of people to live together amicably and for the

<sup>2</sup> All the members of the family hold the family property jointly and their total income is collected in a common fund the management being entrusted to one member who is usually the eldest member of the family.

benefit of all. They have the interest of all at heart and develop in themselves the virtues of citizenship. Moreover, it develops the spirit of helping one another and of sacrifice for the sake of others. In fact the joint family is a society in miniature.

Again from the educational point of view also the joint family is a very important institution. The constant influence of the mother and the father and also the sisters and brothers and other relatives works upon the child and helps it to pick up much information and also enables it to appreciate life. As a matter of fact educationists have realised the educational value of a joint family and where such an institution is not to be found, certain artificial arrangements are made to create the home atmosphere for the child.<sup>2</sup>

### *Marriage.*

Marriage is another very important institution of Indian society.<sup>3</sup> Here it has got a particular sanctity which is not to be found elsewhere. According to the Hindu notion, it is a permanent union between a man and a woman for the performance of religious duties and is consequently indissoluble, so that there is no question of divorce. However, polygamy is allowed and one man can have many wives at the same time; but in practice it is very rare to find a man having two or more wives. But a woman cannot marry more than once except where custom allows her to do so, as for example among the lower castes. So much stress has been laid upon conjugal fidelity in Indian

<sup>2</sup> For example in America.

<sup>3</sup> Marriage being a common institution almost throughout the world we are not always conscious of it as something deserving particular notice however the doctrine of abolition of marriage practised in Russia has aroused most people to the necessity of a close study of marriage problems.

society that women have most willingly preferred to throw themselves alive into the burning fire in order to save their honour and chastity (known to history as the jauhar system), and sometimes their love for their husband has been so intense that they could not suffer the idea of separation and burnt themselves on the pyre of the husband (sati system) There have been undoubtedly many abuses, for the prevention of which the practice of sati has been by law prohibited<sup>5</sup>, still however the ideal is great, admirable, unique and rather superhuman

Among the Muslims divorce is allowed and a man can have four wives at a time but this is not the usual practice. Among the Christians divorce is allowed but there can be no second marriage as long as the first marriage subsists The Legislature has, however, by special legislation, provided for marriages to be contracted irrespective of religious performances Such a marriage is known as civil marriage The custom of having more husbands than one, that is, polyandry, is found among certain classes in the Himālayan region or in South India Certain aboriginal tribes and low caste people have also got this custom

### *The Position of Women*

In this connection, we may briefly note the position which women occupy in the Indian society. In the first place, as regards economic matters, they are mostly dependent upon their husbands or fathers<sup>6</sup> They are not usually the earning members of the family except either in the few highly educated families where they have been employed in services or

<sup>5</sup> Vide Regulation No 3 of 1829 (during Lord William Bentinck's time)

<sup>6</sup> There are certain legal disabilities attaching to women particularly in Hindu society as regards inheritance or occupation of property

professions or in lower classes where there is no parda system and the women go out for work. In the second place the system of parda prevails which has effected the seclusion of women to the narrow circle of their family. This has kept them not only dependent upon the men and ignorant for the most part but has positively prevented the growth of education among them and consequently to some extent among their children. The parda obtains mostly among the Muslims and among the higher or richer classes of Hindu society. In the third place the women are the mistresses and managers of their household. On them depends much of the happiness of the family and almost the whole administration of domestic affairs. Indian society regards women as partners of men and not as their competitors. That is why it has tried to make a division of functions or duties instead of leaving both to compete in the same sphere. In the fourth place, the Hindu ideal gives a very high place to the woman. She is always named with her husband and her name comes before his, for example Sita Rama Radha Krishna. Again to mother is due the highest reverence, who is regarded as superior to Heaven itself. Moreover the eternal power or the divine force of creation has been represented as a female (Ādi Śakti). It must be remembered that the Hindu society did not aim at providing equality or equal facilities to men and women in every sphere of life. On the other hand, it tried to secure the best happiness of the family by making both interdependent and requiring them to perform functions which joined together would make a complete life. No sort of competition or class dispute has been allowed to enter the sacred precincts of the family. Both husband and wife joined together are regarded as one person, that is why wife is known as "Ardhangini."

*Education*

The subject of education will be dealt with in detail in a later chapter. Here it may suffice to say that in the past India laid a great emphasis on education and both in theory and in practice the educated or learned class (Brāhmana class) was placed at the top of society and commanded reverence from all including even the rulers. Females were also educated and sometimes very highly, so much so that even some of the Vedic mantras appear to have been coming from the females. Later on also we find certain highly educated ladies. Though education does not appear to have been universally advocated for all classes alike, we find even from very early days, for example from the Mauryan times, that there has been mass education in a considerable degree. Later on during the reigns of Muslim rulers also education appears to have been wide spread among the people. However, since the decline of the Mughal rule education like many other essentials of life appears to have fallen to the background and the intervening period of political disturbances between the Mughal and the British rule has been a period of rapid decline in education as in many other important matters. Now, however, efforts are being made for the spread of education and though only a very small percentage of people is educated, education is now fast spreading. The medium of a foreign language has been a great drawback in the spread of mass education but now steps are being taken to remove the drawback as far as possible.

*Habits & Customs*

It is not easy to give in brief any comprehensive account of the habits and customs of the Indian people and of their mode of life. However, we may observe certain very prominent

features of Indian life. The chief factors determining the habits and customs of a people are (1) race (2) religion (3) habitation, (4) occupation, (5) wealth & (6) education. We shall deal with each very briefly.

### *Race*

Many races have combined to make up the Indian population with different degrees of admixture between two or more of them. It is not possible to say definitely of each particular class of people that it belongs to any definite race. However, certain peculiarities of the different races are still prominent and we can, broadly speaking, say which races inhabit which parts of the country. The most important race is that of the Indo-Aryans. Though no part of the country can claim purity of race, still the inhabitants of the Punjab, Rajputana and Kashmir can safely be called Indo-Aryan and the more eastward we proceed, the less Aryan blood we find. Towards the east in the central parts, that is, the United Provinces of Agra and Oudh, parts of Rajputana, and the province of Bihar, we find a mixture of Aryan and Dravidian blood, proceeding still further east in Bengal, we find a mixture of Mongolian and Dravidian races. In the south the Dravidians predominate, particularly in Madras. Hyderabad and parts of Central India. Towards the western parts of the country, we find mostly the Scytho-Dravidian type. The Mongoloid type is to be found in the valleys of the Himalayas, Assam and Barma while in the North West Frontier and Baluchistan, we find the Turko-Iranian type. We also find in certain places an admixture of European blood for example some Portuguese blood in Goa and English or French blood in certain other places. Generally, we may say that in order of importance, the Aryans come first, occupying Kashmir, the Punjab and parts of Rajputana. Then come the Dravidians

who occupy parts of Southern and Central India. The third race is that of the Mongolians who occupy the Himālayan valleys, Assam and Burma. A mixture of Āryans and Dravidians is found in most parts of North India, while a mixture of Mongolians and Dravidians is to be found in Bengal and Orissa. There appears to be some mixture of Āryan blood also in these parts. The Dravidians mixed with Scythians are to be found in Western India. The other races like the Turks, Iranians, Portuguese, French and English occupy a very minor position.

Generally speaking the Āryans are tall in stature and fair in complexion. The prominent parts of their dress are a turban and a dhoti and some loosely sewn garment on the body and sometimes trousers and among the females the sārree. They have strict rules of marriage and general morals. The Dravidians are usually short in stature and dark in complexion. Their dress is also remarkable and consists of a special type of dhoti, a shirt, a garment on the body and sometimes a small turban. Their diet is also distinguishable from that of the up-country people. Apart from these two classes, certain other classes deserve special mention. For example, the Bengalis differ in matters of dress and diet from other people. Ordinarily, they put on a loose type of dhoti and a loose type of body garment called 'kurta' and are usually bare-headed. The speciality of their diet consists in predominance of rice and fish. Again the Rajputs have also certain very special characteristics and so on.

### *Religion*

There are a number of religions professed in India. However, we may notice only the chief ones. The most important is the Hindu religion whose followers number about 68 per cent of the total population. Akin to the Hindu religion

and almost coming within or at least very near to its fold are Buddhism, Jainism and Sikhism. The Buddhists number a little more than three per cent while the Jains are hardly even one per cent and the Sikhs are one per cent only. The next important religion is that of Islam whose followers are called Mohammadans and are about 22 per cent of the total population. The next important religion is Christianity whose followers comprise a little more than 3 per cent. Of the other religions Zoroastrianism whose followers are called Parsees and Jewish religion may be mentioned.

As a rule the people of different religions differ in very vital aspects of life. Their diet<sup>7</sup> is different, their dress<sup>8</sup> is different, their modes of living are different, their social and ethical codes<sup>9</sup> are different and there is also a great difference between them in respect of marriage, inheritance, religious practices and even the rights of their members<sup>10</sup>.

### *Habitation*

Customs and manners are also sometimes dependent upon

<sup>7</sup> For example the Hindus are usually vegetarians and even when they are non vegetarians they take only certain kinds of non vegetarian diet. The Mohammadans are usually non vegetarians and are less restricted in variety of non vegetarian diet while the Christians are still less restricted. The Buddhists and Jains take most restricted diet.

<sup>8</sup> For example the Hindus usually wear a dhoti, a kurta and a turban and the Hindu females wear a sari. The Mohammadans mostly wear trousers, kurta and shervani and seldom use turbans. Their women also very often wear trousers but they wear saris also. The Christians put on usually English dress and their women also except only sometimes put on English dress. The Sikhs put on a special kind of trousers and turbans and wear certain other articles prescribed by their religion (Keshi, Kanghi, Kachhi, Kara, Kripana).

<sup>9</sup> For example there is no parda system among Christian women while it is very prevalent among Mohammadans and less prevalent among Hindus.

<sup>10</sup> Even the courts of justice administer different laws for different religions in many respects particularly in respect of marriage, adoption and with certain restrictions succession to property etc.

locality, for example the people in the cities differ very much from those in the villages or the people of Bengal differ from those of Rajputana. Again people of the hilly regions differ from those of the plains. These differences arise chiefly on account of differences in weather, climate, soil, products and the ease or difficulty of procuring a livelihood. These differences also result in differences of habits and cultural developments. For example, people in the hilly regions are hardy and active; those in the plains are easy going and luxurious, those in the deserts live in a different manner, and so do those who inhabit forest areas.

#### *Occupation, Wealth & Education*

Occupation also determines in an important degree one's mode of life. For example, the city labourers differ remarkably from the village farmers. The people of learned professions differ from those of other professions and so on.

Again the wealthier classes differ in their modes of life from the poorer classes and so do the educated classes from the uneducated classes.

#### *Population*

The total population of India according to the Census of 1931 is 35,28,37,778 while in 1921 it was only 31,89,42,480. Of the total number of inhabitants, the Indian states have 8,13,10,845, that is, a little over 23 per cent of the total population. The province of Bengal has the largest population, then the United provinces, and then Madras. Of the total population, about 90 per cent belong to the rural area. As regards communities it is noteworthy that the Hindus who form the majority of the population comprising about 68 per cent predominate in the United provinces, Bihar and Orissa, Assam, Central India, Rajputana, Bombay and Madras.

In Madras, they are 88 per cent. The Mohammadans who are about 22 per cent of the total population form the bulk of the population in Baluchistan, North West Frontier and Kashmir. They form a majority in the Punjab, Eastern Bengal and Sind. Taking Bengal as a whole the Mohammadans form a small majority. The Christians who are about  $1\frac{1}{2}$  per cent of the total population are mostly to be found in the presidency of Madras. Among the Christians about 93 per cent are Indians while 4 per cent are Europeans and 3 per cent belong to the mixed race of Europeans and Indians. The Sikhs are almost confined to the Punjab, the Jains to Rajputana and neighbouring places and the Parsies and the Jews to Bombay and the Buddhists to Burma where they predominate being about 83 per cent. It may also be mentioned that there are certain communities which follow their tribal religion. They are to be found chiefly in Assam, Orissa and the Central Provinces.

In this connection, it may be mentioned that of the total population about 71 per cent people are supported by agriculture proper while only 10 per cent are supported by industries most of which are cottage industries or unorganised industries, only one per cent people are employed in organised industries. About 2 per cent are engaged in pastoral and hunting occupations, six per cent in trade and transport. These occupations in a large measure are dependent upon agriculture and agricultural products. One per cent of the population is engaged in various Government offices and services.

### *Languages*

The diversity of races and religions and the vastness of the country have resulted in a number of languages being developed in the country. The census returns show that two hundred and twenty five (225) languages are spoken by the people.

Of these however the chief number about twelve or thirteen. The most widely spoken language is Hindi. This word Hindi is liable to various interpretations. It comprises mainly Eastern Hindi and Western Hindi but may very well include Bihari and Rajasthanian also. Western Hindi may also include what is called Urdu. About one third of the people speak this Hindi language. Connected in various degrees with this Hindi are the Marathi, the Panjabi, and the Gujarati. Next in importance comes the Bengali and then come Telugu, Tamil, Kanarese and Malavalam which are chiefly spoken in the south. Oriya which is spoken in Orissa and Burmese which is spoken in Burma.<sup>11</sup>

We can classify the numerous languages of India according to their sources into five groups. The first is that of the Indo-Aryan languages including Hindi, Marathi, Gujarati, Panjabi, Rajasthanian, Bihari, Bengali and others. The second group is that of the Dravidian languages including Tamil, Telugu, Kanarese, Malavalam, Tulu and others. The third group is that of the languages of the 'Aborigines'. The fourth group is that of the Iranian branch of the Aryan languages including Persian and Pashai. The fifth group is that of the Western languages including English, French, Portuguese, and others.

Another important question connected with the languages is that of the script. The most important script is that of the Devanagari in which Sanskrit is written. It is in this script exactly or with slight modifications that Hindi, Marathi, Bihari, Rajasthanian and even Gujarati and Panjabi are written. Then there is the Persian script in which Persian and Urdu etc.

<sup>11</sup> According to the Census figures of 1931 the speakers of various languages per 10,000 of the population are—Western Hind 2041, Bengal 1525, Bihari 797, Telugu, 752, Marathi 596, Tamil, 582, Panjabi 452, Rajasthanian 497, Kanarese 328, Oriya 319, Gujarat 310, Malavalam 261, Burmese 253, Eastern Hindi 224 and so on.

are written. Another important script is that in which Bengali is written, which is in reality only a bye form of Nagari. The southern languages comprised in the Dravidian group and Burmese have also different scripts. Again English and other western languages have an altogether different script.

*Necessity of a common language and a common script*

Amidst the diversity of languages and scripts the necessity has been keenly felt particularly in recent times of having a common language for the whole of the country. The possibility of such a *Lingua Franca* has been very widely discussed and three schools have come to the forefront, one advocating Hindi, another Urdu and the third English. Of these English appears to have the least chance of success because of its being foreign in language and in script and of its being the least popular. Hindi appears to have the best chance of success because first of all it is a very highly developed language, and embodies in greatest measure the traditions of the country, secondly it is most widely spoken and thirdly it is written in the 'Nagari' script which is most common in India. Urdu having a script foreign to all other popular languages and not being so highly developed has much less chance of success. Bengali is undoubtedly one of the most highly developed languages of India but it has such a peculiar script that it can have no chance of success as a 'Lingua Franca'. Similar is the case with Tâmil and Telugu which in addition to the disadvantages of Bengali have disadvantages of their own chiefly consisting in narrowness of scope and tradition.

As regards script the necessity of a common script is also very keenly felt and as observed in the Census Report<sup>12</sup> of

<sup>12</sup> *See the Report Vol I part 1 p 356*

1931, 'The need for a common script for India is probably even greater than that for a common tongue'

### *Economic conditions*

No account of a people can be regarded as complete which fails to mention its economic conditions. In India, the economic condition of the people is very unsatisfactory. While on the one hand we do find certain very wealthy persons, on the other the bulk of the population is very poor and the average income per capita is very small<sup>13</sup>. In ancient times, India used to be a very prosperous and wealthy country. In medieval ages, the accounts of the Mughal Empire and the Vijayanagar Empire also show that the country was economically very highly developed. Foreign travellers have borne testimony to this observation and remains of old buildings and other works of art also demonstrate this. However, during the few centuries following the decay of the Mughal Empire a great economic disturbance appears to have taken place and while the people became poorer they at the same time cultivated the habit of concealing their wealth. This has during the modern times resulted in a low standard of life prevailing throughout the country.

Another important factor has to be noted. India has always been and still is chiefly an agricultural country. And agriculture attained in India a very high degree of efficiency.

Different estimates and calculations place this income at different figures while one estimate gives this income to be Rs. 15 annually, another estimate gives it to be Rs. 100 and the third one gives it to be Rs. 50. This last may be regarded as a fairly reasonable and correct estimate though any such calculation is deceptive and of dubious value. Compare this figure with the figures for America, England, France and other countries which are surprisingly high being, £72, £50, £38 respectively.

Even now only a few improvements are possible<sup>1</sup>. But at the same time, Indian industries had also attained a high degree of efficiency and wide reputation, but in modern times due to various causes<sup>2</sup> while in the first place industrial development has not kept pace with other countries, in the second place, her own industries have often declined, and in the third place her agriculture also has remained behind and now, however, efforts are being made to revive or improve both agriculture and other industries. Lack of education particularly of practical training is a great impediment in the way. Again though the imperial and various provincial governments are devoting their attention to this aspect of Indian life much still remains to be done and the Government cannot escape the blame of lack of full attention particularly in the past.

### *The Course of Evolution—beginning*

The important features of Indian civilization have been noticed above. It would now be convenient to review briefly the course of its evolution. The earliest Aryan culture was mainly influenced in the beginning by Dravidian culture but the main effects of the contact are chiefly visible to-day either in certain forms of worship for example, Snake wor-

<sup>1</sup> See the report of the Industrial Commission 1918.

<sup>2</sup> Various causes have been discussed. The introduction of caste has been regarded as one cause because it appears to have prevented people from following the professions they are most fitted for. But it may be remembered that while in the first place the caste system has tended to preserve and increase the efficiency of certain professions in the second place it existed in full force even in the days of her great progress. Another cause is the diversion of steam and electricity to other countries and the absence of sufficient quantity of coal and iron in India. This has certainly done something to retard her progress. However the chief cause appears to be the political and economic disturbance of the period just preceding the full establishment.

ship, or in differences of language, dress, habits and customs

### *Era of Reform*

Later on came an era of reform which saw the growth of Buddhism and Jainism and other religious movements. The most important however, in its effects on the country and her civilization was Buddhism which tried on the one hand to introduce among the people certain important ideas of social reform like the futility of 'caste system', on the other it tried to purge the existing religious system of various evils, for example, the practice of sacrifice. The influence of Buddhism on the cultural side of Indian life is however most remarkable, from practical point of view, is the spread of education according to a certain system and on certain lines and in the emphasis it laid on the purity of character and discipline of conduct. It is also visible in the works of Art of that period. Yet it is not to be denied that the earlier civilization continued to have a stronghold on the Indian people throughout but the reforms introduced were important and acceptable to the people generally and as a matter of fact in the course of time, they were made an inalienable part of the Indian culture.

### *Conflict with Islam*

The next important landmark is the advent of Islam. Up to that time all authorities agree that India maintained a very high standard of morality and toleration. With the new factors coming into play, however, the country witnessed a marked upheaval. Intolerance with religious persecution was introduced but in course of time it had to be given up. The contact, however, of Islamic and Indian cultures produced important results which may be noticed in two different periods. In the first period leading up to the beginning of

Mughal administration, we find on the one hand an attempt by certain thinkers to organise the existing society in a way to secure it from Islamic influence and on the other an attempt by certain other thinkers to weld together the two cultures in a harmonious manner. The former introduced more rigidity into the existing system by making strict rules about caste organisations, dining marriage and worship. At the same time they tried to withdraw from controversies and conflicts and taught the people to concentrate more on religious activities particularly Bhakti (devotion to God). The latter class of thinkers formed new sects combining the tenets and practices of both Indian and Mohammadan religion. The chief reform which they sought to introduce in the existing society was the abolition of the caste system. Such leaders were Kabir, Nanak and others. It may be noted here that most probably as a result of the activities of the former class of leaders combined with the new practices of the foreigners there arose in Indian society the custom of early marriage and the custom of *pardâ* now prevailing among the females.

#### *Harmonious combination*

The second period witnessed a harmonious combination of the long conflicting cultures and ideas as a result of which a common civilization evolved which though essentially Aryan or Hindu, had certain features taken from the new culture. In the important sphere of human activity connected with art and literature, we find a harmonious mixture of the two. The Hindu fine arts embracing architecture, sculpture, painting and music were modified by the introduction of new systems. As regards literature, we find that a highly developed language known as Hindi or Hindustani came into being and the earlier language was greatly modified. The birth and growth of Urdu is essentially due to the contact of the two

cultures and but for the different script used for it and some difference in prosody the two languages Hindi and Urdu are much the same.

It is however important to remember that while the earlier civilization could easily assimilate the foreign cultures introduced into India before the arrival of the Muslims, for example, by the 'Sakas', the 'Yuecnis' and others by a double process of overpowering them by its essential superiority and by giving them a suitable place in its own world, it could not so completely assimilate the culture introduced by the Muslims. We find therefore that though the Indian culture is still one which is essentially Aryan or Hindu, modified to some extent by other influences, and there has been undoubtedly a marked degree of assimilation, the two communities are still separate and sometimes difficult situations arise in the settlement of their disputes. Thus, however, it may be observed, does not destroy the cultural unity of the country as a whole.

### *Decline*

Then came a period in the history of Indian culture which though lasting comparatively for a short time showed a marked decline in culture and civilization. The great virtues on which India prided, for example those of veracity, honesty, and fidelity and the great advancement in arts, science, literature and learning appear to be vanishing. Some kind of a Hindu revival was attempted particularly by the Marathās but it failed to reach the mark and as a matter of fact diverted its energies in dealing with minor differences. One cannot fail to observe that much of this decline was due to the political circumstances of the country. This sad decline had three most unwelcome results. In the first place, the cultural life of the country fell from a marked height into a deep valley

crippling her health, wealth and prosperity. In the second place it presented such a gloomy picture to the Europeans who came into India that they could not for a long time realise the essential greatness of Indian culture and could no longer imagine its past glory. But saddest of all, it made even Indians forget themselves, their real culture and attainments. Even they could hardly believe that their civilisation had been essentially so high only a few centuries back.

### *Contact with the West*

The coming of the Europeans and the contact of the East and the West may be regarded as the last stage in the evolution of Indian culture. This contact can be looked at from different points of view and its effects have been really manifold. We may, however, notice here the chief of the new forces which have been at work. The nineteenth century must be regarded as a very important period not only in the history of European countries but also in that of India. It saw the growth of many movements and the infusion of a new life into the people of slumbering India. From cultural point of view the important forces at work have been—(1) The growth of various sciences and the invention of steam, railways, electricity etc. This force has effected an unprecedented change in the actual life of the people not only of India but also of the whole world. (2) Introduction of Christianity. This has on the one hand introduced a different religion in the country creating a separate community, on the other through the missionaries it has helped greatly the spread of Western Education in India. (3) The introduction of social and political ideas of the West into this country. This has chiefly the effect of slackening the bonds of caste and joint family and of fostering the growth of Indian Nationalism and infusing a spirit of active civic life.

(4) The spirit of reform which has actuated a number of Indians to form various societies or to follow in the footsteps of certain outside reformers. These societies aim at both social and religious reforms.

During the last many decades various important movements have been set afoot for the progress of Indian people in their various aspects of life. Abolition, modification, or reform of the old ideas, systems and customs and introduction of new culture or revival of the old have all been attempted with more or less success.

### *The Latest Phase*

The latest phase of her cultural development is a kind of revival of the old culture with only necessary and useful modifications in the light of the present day knowledge. India is again occupying a prominent place in the world. Her merits are being recognised, her culture is being appreciated and her ideas and ideals respected. For some time there was a tendency among an important section of the educated people to follow the West almost blindly. But now the time is gone and the West itself finds that its culture lacks certain important attributes which Indian culture possesses. It is needless to say that the study of ancient Indian literature by Europeans, the work of Indian individuals outside India and the life and work of Swami Vivekanand, Tagore, Mahatma Gandhi and numerous others have opened the eyes of the world and it is not too much to say that the world may find a useful shelter from the evils of western civilization which are no more secrets now in the calm and peaceful atmosphere of the Indian domesticity, the noble and lofty tone of her philosophy and the high morality advocated by her great leaders and practised by her deserving sons and daughters.

## *Political and Administrative Evolution*

### *The Earlier Foundations*

A proper understanding of the administrative organisation of a country and the working of its 'constitution' demands a close study of the gradual evolution of its government. In several countries, we have to go back over the history of centuries before we can comprehend the working of their constitution. For instance, our study of the English Constitution cannot in any sense be called complete unless we have firmly understood not only the growth of Parliament since the days of Henry III<sup>1</sup> and Simon De Montfort but also the Magnum Concilium of the Norman kings and the Witenagemot of the still earlier Anglo Saxon period. Similarly, we have also to go back to the days of John and Magna Carta to form a clear idea of the spirit and working of the present constitution. In India, however, the governmental organisation has been undergoing such radical changes from time to time that though we cannot altogether dispense with the earlier foundations of the present system, we can still content ourselves with a meagre knowledge of those foundations. At the same time, it must always be borne in mind that the history of political institutions in India is by no means continuous and perfect and is available to the student only in parts.

<sup>1</sup> Henry III was an Angevin king who ruled England from 1216 to 1272 A.D. Simon De Montfort was a famous political leader during that period.

*The Ancient Period*

Thus while we see that no truly historical account of the administrative system prevailing during the pre Mauryan age can be given, we have got a clear record of the Mauryan age. But again there is a deplorable break for centuries until we come to the Gupta age and even then we have got no satisfactory account of the administrative structure. Some theoretical treatment of the subjects of administration has certainly been given in the 'Dharma Sutras', 'Dharma Śāstras' and other works of literature but how far they represent the actual working of administration cannot be said with any definiteness. Some help is also derived from inscriptions. But then again a serious break occurs until we come to the days of Harsa when thanks to Bana, his *Harsacharita* and Kādambari furnish us with a detailed account of the administration. After another break we come to the twelfth century when Kalhana wrote his *Rajtarangini*, but unfortunately it is confined only to Kashmir.

*The Medieval Period*

The twelfth century marks the end of the ancient period of Indian history. During the medieval age which followed, the country had to face unprecedented difficulties and for centuries it was not easy to establish any regular system of administration. It was only during the reign of Akbar that we find a regular administrative machinery at work whose detailed account is available in the pages of Abul Fazal's *Ain-i-Akbari*. Again there is available a detailed account of the administrative system prevailing in Marathā countries during the seventeenth and eighteenth centuries.

*The Modern Period*

During the modern period which may be said to begin

after the middle of the eighteenth century, the country was for about a century troubled by various wars and conflicts allowing at best only a haphazard disturbed type of administration with very little security of life and property. It is only when this period was superseded by a period of settled administration introduced by British statesmen that we can really begin the history of Indian constitution in modern period. Here we are in a position to give a continuous and detailed account of the constitutional growth and the practical working of the administration.

### *Necessity of earlier history*

Thus at the outset we have to note two important facts. For while on the one hand the strictly modern constitution of India can be traced back only to the advent of the British people into this country, on the other, there is no regular history available of the earlier political institutions of the country. One may therefore be tempted in studying the constitution of India to ignore its earlier foundations. Such a step, however, would be misleading, for though the present system appears to be a novel introduction with little reference to the earlier system or systems, the fact can not be lost sight of that certain basic principles of Indian political organisation have never ceased to work through out the course of our history and even today it cannot be said that the unity of culture existing through ages has disappeared. It is therefore not only useful but also necessary, before proceeding to a description of the present constitution, to understand the salient features of Indian political organization as evidenced in earlier ages, particularly those which still continue to have their importance in a greater or lesser degree. For example,

the position of the village as the smallest unit of administration has been maintained right down from the Hindu ages to the present day. Similarly the revenue system has held its ground almost throughout the course of Indian history.

### *Subjects dealt with*

In describing the salient features of the earlier Indian political organisation it would be convenient to look at its various aspects separately one by one. Thus we shall broadly speaking look at the sovereign power, the executive, the legislature, the judiciary, the revenue, the land settlement, the army and warfare.

### *The Sovereign Power*

There exists a great difference of opinion among scholars as to the form of government existing in ancient India and as to the person or persons in whom was vested the sovereign power of the state. Monarchy, despotic as well as constitutional, Oligarchy, Republic, Feudalism and Federalism, all these have been shown or supposed to exist in ancient India and even in any one particular form there is a difference of opinion, very often due to lack of sufficient material, about the powers exercised by and the limitations imposed upon the ruling authority. It is therefore not quite safe to formulate any general principles regarding the sovereign power. However, we may say with safety that the form of government which prevailed most and of which we have definite records is monarchical. Certain Buddhist accounts and also some other writings go to prove the existence of republics and popular assemblies of a very highly advanced type and of modern parliamentary procedure. Still the general trend of Indian political thought appears to be favourable to monarchy and as a matter of fact monarchy seems to be the most prevailing type

of government. In a monarchy the supreme head of the state is the king. In the earliest existing Indian literature that is the Vaidic literature he is spoken of as 'rajan' and appears to be elected by the people<sup>2</sup>. He is the military leader of his people and is also their ruler, so that he appears to be the sovereign power<sup>3</sup>, but there are three very important restrictions on the exercise of his power.

The first is the law (Rita). As Mr. Jayaswal has pointed out kingship was not above the law but under it, so that the supremacy of law appears to be the rule. It is to be remembered that this law was derived mostly from the scriptures. The great legislators or law givers of India were not the kings or the ministers on the one hand nor the people or their representatives on the other but the great 'rishis' who commanded the reverence of all alike. It may be noted that custom was also regarded as having the force of law. This reverence for law continued throughout and even continues up to this day though the position of the sources of law according to their respective importance has changed.

The second restriction was the purpose of administration, which was to promote the prosperity of the people. It is noteworthy that the functions of the state have been

<sup>2</sup> But the office of kingship gradually tended to become hereditary.

<sup>3</sup> As a matter of fact Indian conception of sovereignty was pluralistic and no one single person or body of persons was sovereign. For while allegiance to the king was enjoined on the subjects generally the law and the caste also claimed allegiance of the people and the king himself had to bow to the law. In Europe, it may be noted that from the 15th century down to the middle of the 19th century they believed in unified indivisible sovereignty, but now the conception of pluralistic sovereignty prevails. Bosanquet in his *Philosophical Theory of the State* p. 261 says: 'Sovereignty, therefore, resides in no one element. It is essentially the relation in which each factor of the constitution stands to the whole. That is to say, it resides only in the organised whole acting *qua* organised whole.'

varying in different ages. Sometimes the state proceeded to guide the whole life of the people including its religious and moral aspect<sup>4</sup>, while at other times, as in medieval ages, the state only collected revenues protected the people from wars and aggressions and almost finished its work there. During modern times the state is gradually widening its scope of activity.

The third restriction was the will of the people. In the words of Mr. Ghoshal the Vaidic king was not absolute but his power was limited by the will of the people as expressed in the tribal assembly. The popular assembly in the Vaidic age appears to be of two kinds. The one is called 'Sabhâ' and the other 'Samiti'. Probably the one was a big assembly and the other a smaller council. The assembly or its small committee appears to be a judicial tribunal also. We are however not quite certain of the extent to which the assembly could control the exercise of power by the king.

### *The Executive*

The king was the executive head of the state and he conducted the administration with the help of his ministers and also of the assembly.

For the purpose of administration, the kingdom or empire was divided into several provinces and each province into smaller divisions, the lowest administrative unit being the village. Such a system appears to be in force with more or less effect during the medieval times also. The system of ministers also appears in some form or other to be in vogue during the medieval times and the Marâthâ system of

<sup>4</sup> Dr. Beni Prasad has pointed out that 'At its highest the Hindu state was not merely a culture state but an all pervasive moral and spiritual association. The State in Ancient India' p. 305. According to the Hindu political theory the king is like a father to his subjects.

administration particularly enjoins a body of eight ministers called the 'Asta pradhan'. For the ancient period, we find in the Mahabharata that a king cannot govern the kingdom without a council or even for three days.<sup>5</sup> The village in ancient India appears to be an autonomous unit exercising within its own jurisdiction many of the administrative functions, including even the decision of certain cases. During the Mughal age also the village autonomy appears to have been left undisturbed.<sup>6</sup> During the British period the executive is usually vested in a single person who is assisted by a council.

### *The Legislature*

According to the Hindu conception it was the duty of the king to enforce the sacred law. This sacred law was derived mostly from religious scriptures. The primary sources of law were thus — (1) The 'Śruti' that is the Vedas and (2) The Smritis or the 'Dharma Śāstras'. But apart from these local and class custom has also been recognised as having the force of law. For example the Dharma Śāstra of Gautama lays down that the laws of countries, castes and families have also authority provided they are not opposed to the scriptures.<sup>7</sup> Bauddhayaṇa adds to the Vedas and the Smritis the examples of 'Śiṣṭa' that is, learned and virtuous men. Manu the great Smṛiti writer also admits the customs of virtuous men as a source of law. Manu has also mentioned as a fourth source of law one's own conscience (Atma Tusti) which is also recognised by Yajñavalkya. It would again appear that the decrees of certain assemblies constituted in a particular manner were also recognised as law.

<sup>5</sup> Santa Parva, Chapter 136, Śloka 11.

<sup>6</sup> See Dr. Ben Prasad's History of Jahangir, p. 91.

<sup>7</sup> Gautama, Chapter II, Sūtra 20.

In the mediæval age when Muslim rulers ruled the country the law administered was taken from different sources. As far as the Hindu population was concerned it was allowed to be governed by its own existing laws as regards civil affairs. But the criminal law mostly conformed to Islamic precepts. According to Islamic conception also the primary sources of law were the religious scriptures. According to the Hanafi school there were four sources of law: (1) The Quran which is supposed to be the word of God; (2) Hadis which means tradition and refers to the practices of the prophet which are collectively known as the Sunna; (3) Ijma which means concurrence among the jurists and refers to the propositions accepted during the time of the first four caliphs; and (4) Kujas which means natural reason guided by the spirit rather than the letter of the Quran.

During the modern times under British rule also the sources of law are various. For certain matters, for example marriage, adoption, inheritance, gift, will, etc., the personal law of the parties is administered which is primarily derived from their respective scriptures. But even in this the law has been modified from time to time by direct legislation or judicial interpretation. For other matters the primary source of law is the legislative body which under the present constitution consists of several bodies. At the head is the Parliament sitting in London whose enactments are binding on all people within the Empire. Then there are the Legislative Assembly and the Council of State which can legislate for the whole of India. And after that are the provincial legislative councils which can legislate for the respective provinces.<sup>6</sup> Apart from these the various local bodies, for example the Municipal Boards and the District

<sup>6</sup> Under the new Government of India Act of 1935 the Central Legislative body will consist of the Council of State and the Federal Assembly and the Provincial Legislative bodies will consist of the Legislative Council

Boards have also been empowered to frame rules and bye-laws. Under the present constitution the viceroy has also the power under certain circumstances to make laws which are known as ordinances and can operate for six months or to pass Acts which are known as Governor General's Acts. Another important source is the judiciary, that is, the decision of the judicial tribunals also operates as law. Such tribunals are the Judicial Committee of the Privy Council in London and the various High Courts, Chief Courts and similar tribunals in the provinces.\*

### *The Judiciary*

It has always been regarded as the primary duty of the administration to dispense justice and in both the ancient and medieval periods the king appears to be administering justice personally. In the Vedic age the king performed some judicial functions and his assembly the 'sabha' also, it appears, acted as a court of justice. From the 'Sutrakars' and the writers of 'Dharma Śāstras', we know that for the administration of justice witnesses were usually summoned and their evidence was taken. Another important point in awarding punishment is that regard was also paid to the caste of the offender. For example the Brahmana was awarded a very light punishment. He could not be hanged and according to Baudhavana should be exempt from corporal punishment. This concession, it must be remembered, was allowed having in view the kind of life lived by the offender and the effect a particular punishment would have upon him. Thus Baudhavana himself says that those Brahmanas

and the Legislative Assembly in certain provinces and of the Legislative Assembly in certain others.

\*Under the new Act mentioned above there will be a Federal Court for the whole of India.

who lived as agriculturists, cattle-rearers, artisans, servants or actors etc. should be treated as 'Sudras'. A third important point is the system of ordeals. It seems to be coming down from very early ages and continued up to quite late in the ancient period. The principle underlying this system seems to be this: when neither the documentary evidence nor the oral evidence of witnesses can determine the guilt or otherwise of the offender, nor is the judge able to find out the guilt by his reason, recourse can be had to any of the ordeals according to circumstances. When taking the help of these ordeals religious ceremonies have to be very carefully and minutely observed. The ordeals were many in kind and the Smṛiti writer Bṛhaspati has mentioned nine of them in detail. There was the ordeal by balance in which the guilty person was supposed to weigh heavier when weighed a second time. Certain ordeals were very light and particularly meant for Brahmanas and women while some others were very severe, for example to prove one's innocence one had to take a hot piece of gold out of heated oil without being injured. Another noteworthy point is the gradation of courts. Even in pre-Mauryan age we find a description of such courts. Kautilya writing in the Mauryan age has also mentioned regular series of courts. Several local bodies and groups of persons as well as the village panchayat and the head of the village appear to have performed certain judicial functions.

The Muslim rulers who ruled in the mediæval age also usually administered justice personally and we have clear evidence of Jahangir and others administering justice themselves. There were also established various courts but as observed above the Hindu population settled most of its disputes in its village panchayats.

During the modern times the British Government has established a regular series of courts and the village pan-

chayat seems to have fallen into the background though there is in evidence an attempt to revive that old institution and it is in certain places gaining ground

### *Revenue*

The subject of revenue seems to have attracted notice from very early times. Broadly speaking, we can say that the Hindu theory in ancient India fixed as the standard of land revenue one sixth of the gross produce. But we find that it varied from one sixth to one tenth. But apart from the land tax, revenue was also derived from merchandise and we find Baudhayana saying that a duty of ten per cent should be levied on imports of the sea. And Gautama says that on certain articles of merchandise, as fruits, honey etc. only  $1/60$  (one sixtieth) should be levied. Certain classes of persons were exempted from taxation. Āpastamba mentions Brahmanas, ascetics, students, minors, women, the diseased, the deaf the blind and certain Śūdras as so exempted. In the Mauryan age it appears that one fourth of the land produce was taken as land revenue while on goods of merchandise the state levied one tenth of the price for which they were sold in the cities. In Manu we find land revenue varying from one fourth to one eighth of the land produce and tax on merchandise one-twentieth of the value and so on. In the south of India we have a record of the Chola kingdom in which  $1/6$  of the gross produce was taken as land revenue. But including all taxes about  $1/4$  or even a little more had to be paid.

During the time of the Muslim rulers, Sher Shah used to take  $1/4$  of the gross produce as land revenue. But Akbar fixed this proportion at  $1/3$  which could be paid either in cash or in kind. Shivaji the Maratha ruler, fixed  $2/5$  of the gross produce as land revenue.

During the modern times, in places where the zamindari system prevails and the settlement is temporary, the government usually takes about 50% of what the zamindar takes from the actual cultivator of the soil as rent. In permanently settled parts the percentage is about 25 only. The payment made by the tenants is by no means uniform and varies greatly with the class of tenant. But in those parts of the country where the ryotwari system prevails and the tenant pays directly to the government the share of the government comes to about one fifth of the land produce.

#### *Land settlement*

Connected with the subject of land revenue is the subject of land settlement. We have a record of the eleventh century of the Chola kingdom in the south of India where in 1086 A.D. the land was measured and surveyed. Again we find that Sher Shah also got the land measured while Akbar got regular survey and measurement of the land made. During the modern times survey is made very systematically and periodically.

As regards the settlement of revenue, the usual system prevailing in India was that in which the cultivator paid to the state directly. But in modern times there are two systems—one is the ryotwari system in which the cultivator directly pays to the state and the other is the zamindari system in which the ryots make the payments through the zamindars. In the zamindari system as it prevails to day, in certain parts of the country there is permanent settlement, that is, the revenue has been settled once for all, while in other parts the settlement is made periodically, the usual periods being 15, 20, or 30 years in various provinces, the last being the most common.

*The army and warfare*

The army also has been in existence from very early times, and in ancient and medieval ages the king himself used to lead the army. About army administration we have a detailed record of the Mauryan age. We find that the army was divided according to the Hindu conception into four limbs, these limbs being the infantry, the cavalry, the chariots and the elephants. For the purpose of administration there were six boards or panchayats each consisting of five members. Four of the boards looked after the four limbs of the army mentioned above respectively, while the fifth board looked after the navy and the sixth looked after transport and commissariat. Again, we have a detailed record of the Mughal rule during Akbar's time who also had an army of four limbs with the difference that instead of the chariots he had the artillery. The modern army is now supplemented not only by the navy but also by the air force.

In connection with the army, we can also mention that in ancient India warfare seems to have been carried on with a punctilious regard for certain rules of conduct which reveal a very high standard of ethical code. The Mahabharata lays down that a soldier should not wear armour when he has to fight against one without armour. Again a soldier should not slay any one who is taking his food, or is asleep, thirsty, fatigued or is staying in trust etc. He should also not strike one whose bow string has been cut or who has been disabled etc etc. A wounded enemy had to be sent home or treated properly by competent doctors and if a righteous warrior of the enemy camp is wounded and captured he should be cured and set free.

*The British Connection*

This is in brief a general survey of the administrative structure of India during the ancient and mediæval ages and thus in essence is the foundation on which the present system has been built. As we can see the system obtaining today is based on the institutions and the ideas prevailing in earlier times. Now we come definitely to the evolution of the present system and it is necessary before studying the actual working of the constitution to study in some detail the history of the growth of this constitution. What has been said above can help us in understanding the basic principles, and the ideas working below the surface, of the Indian administration. We can now notice the various steps that have led us to the present constitution. As the history of the present constitution strictly speaking is only concerned with the British administration of India we have to go back to the days of the East India Company for the study of the subject. An important point in this connection is the location in part of the Indian administrative machinery in England. It is quite obvious that the connection of India with England as it is in the modern times must necessarily require the partial existence in England of the Indian administrative machinery. This has been a dominant fact about the present Indian constitution from the very beginning down to the present day and must be borne in mind when studying its history.

*The East India Company upto 1708*

Though the first constitutional document of importance as regards the British administration of India is the Regulating Act of 1773, it would be better to know into some details the constitution of the East India Company, for

though that constitution mainly concerned the Company itself it affected considerably the conduct of the British people in India.

It was on the 31st of December 1600 that Queen Elizabeth of England granted a charter incorporating the East India Company in its first form as "The Governor and Company of merchants of London trading into the East Indies". Its management was originally in the hands of a Governor and Council but was later entrusted to a body of twenty-four persons known collectively as the Board of Directors. These Directors were annually elected by the shareholders and the body of the shareholders was known as the Court of Proprietors. The next important charter was issued by Cromwell in 1657 which reorganised the Company on a new footing and infused life and vigour into it. In 1661 Charles II granted to the Company a fresh charter by which the Company acquired the rights of coinage and jurisdiction over English subjects in the East. Thus the Company began to exercise certain powers of an administrative authority. In 1698 another Company was established but to avoid difficulties, in the beginning of the 18th century the Company was reconstructed and named as "The United Company of merchants of England trading into the East Indies" and Parliament confirmed this in 1708. The Company had two authorities to deal with the Government of England and the Government in India. From the Government of England the Company succeeded in getting charters and from the Government in India it tried to secure trading and other rights. Sir Thomas Roe, who came to India as the ambassador from James I in the court of Jahangir, succeeded in securing some rights for the Company. After that the Company secured rights of trade in various parts of the country and during the reign of Farrukh Shāh, it acquired the rights of

trading without paying the duty

Apart from trading the Company also began to acquire some zamindari property which gradually developed and in due course the three presidencies were formed. The first presidency was that of Madras formed in 1652. The second was that of Bombay formed in 1689 and the third was that of Calcutta (or Fort William) formed in 1700.

*From 1703 to 1773*

After 1703 the Company became a stronger body and the interests of the Company and the state were now welded together. As a matter of fact what may be termed the factory stage was over and the Company had begun to acquire territorial possession. During this period, the Company succeeded in defeating the French in South India and the Nawab of Bengal in Northern India, thus becoming a dominant power in the South and the practical ruler of Bengal in the North. It was in 1757 that the battle of Plassey was fought which resulted in the victory of the Company and its elevation to the virtual rulership of Bengal. After this the Company could install and depose the Nawab of Bengal at pleasure. In the same year Clive was made the Governor of Fort William. In 1760 the French power was finally overthrown at the battle of Wandewash and Pondicherry surrendered in 1761.

The next constitutionally important date is the year 1763 in which Clive made political settlements with the Mughal Emperor and the Nawab Vazir of Oudh. This was done by the treaty of Alahabad which secured for the Company the Diwani<sup>10</sup> of Bengal, Bihar and Orissa, giving it a constitu-

<sup>10</sup> The Diwan was the highest revenue officer who collected the revenue, spent as much as was necessary and paid the surplus to the Emperor.

national position in the administration of the Province. From 1765 to 1767 Clive was the Governor of Fort William for the second time. During this Governor Lord Clive introduced what is known as the system of Double Government which produced disastrous results and had to be abandoned soon after. In that system there were two points of control. Theoretically of the two ruling authorities—the Nawab and the Company—the Nawab was responsible for the administration of justice, maintenance of law and order and the defence of the country while the Company was responsible for the collection of revenue. Now Clive went further than this for in practice he also took the responsibility of defence and disbanded the Nawab's army, giving him an annual allowance. For the practical working of administration however Indian officers had to be appointed and two deputy Nawabs were appointed for Bengal and Bihar respectively. Some time after in 1769 English supervisors were appointed to supervise the collection of revenue.

In this system of double government while the Company exercised all ruling authority it kept its hands free from the responsibility of administration. On the one hand the Nawab had to carry on the administration but had no power. This divorce of authority from responsibility led to great evils and gross oppression of the people.

This Double Government was put a end to by Warren Hastings who became the Governor of Bengal in 1772. He dismissed the Deputy Nawabs and reorganised the administration. He established a Board of Revenue at Calcutta and appointed English collector and Commissioners. He also established two courts of appeal for hearing civil and criminal appeals respectively at Calcutta. The civil appeals court was called the Sudd Diwan Adalat and the criminal

appellate court was called the Sudder Nizamat Adalat

*The Regulating Act of 1773*

In 1773 the first step was taken towards the framing of the Indian constitution. It was in this year that the Regulating Act was passed which tried to establish a systematic and efficient government for India. This Act made certain changes in the constitution of the company also. It provided that the Directors would hold office for four years.<sup>11</sup> It also provided that only those share holders could vote in the Court of Proprietors who had held £1000 of stock for at least a year. Parliament in passing this Act also made provision for the control of the Company by the Government of England. The Act laid down that the Directors would place all important correspondence before the cabinet.

This Act provided that the Governor of Bengal was to be styled the Governor General of Bengal and was to have authority over the presidencies of Bombay and Madras also. The Governor General was to be assisted by a council of four members. But the Governor General had no power to overrule his council and he was bound by the majority. He had a casting vote only in case his councillors were equally divided. The first Governor General and the first members of the council were appointed by the Act itself to hold office for five years. After that, the company had the right to make the appointments. The Governor General in Council was also given the power of military administration and as regards the presidencies of Bombay and Madras, the Governor General in Council had the power to supervise their administration and they could not without his sanction make wars or treaties.

<sup>11</sup> So far the Directors were elected annually

For the administration of justice the Act established a Supreme Court of Judicature at Calcutta which consisted of a Chief Justice and three puisne judges appointed by the Crown. It had jurisdiction over all British subjects residing in the provinces of Bengal, Bihar and Orissa. Appeals from its decisions lay to the King in Council. The law administered by this court was English law.

The Act also provided for certain legislation and the Governor General in Council was empowered to make regulations, which were to be called ordinances for the territories of the Company. But it was laid down that they were not to be in conflict with the laws of England and it was necessary for their validity that they should be registered and published in the Supreme Court. Again the King in Council could also veto them.

Thus we see that this Act regulated the administration of the company's dominions and as a matter of fact it is this structure which forms the foundation of the existing constitution. At the same time, it was the first step to bring the company's administration of India under the control of parliament.

### *After the Regulating Act*

The Act being the first attempt of its kind had necessarily several defects which produced undesirable results. To remove these defects an Amending Act was passed in 1781 which defined the jurisdiction of the Supreme Court which removed much cause of grievance. This Act provided that in private civil suits Hindu and Mohammedan laws were to be applied. It also exempted the Governor General in Council from the jurisdiction of the court. This Court was given jurisdiction over all the inhabitants of Calcutta. About this time, judges were appointed in dis-

tracts. It may be noted that side by side with the Supreme Court there also existed a series of company's courts.

### *Pitt's India Act*

The next important constitutional document after the Regulating Act was the Pitt's India Act which was passed in 1774. This Act further strengthened the control of parliament over the Company's affairs. It established a Board of Control consisting of six commissioners<sup>12</sup> appointed by the king. The work entrusted to this Board was "to superintend, direct and control all acts, operations and concerns which in any way relate to the civil or military government or revenues of the British territorial possessions in the East Indies". It was also provided that the Board of Directors could not send any orders to India without the sanction of the Board of Control and that body had access to all papers and correspondence of the Company.

The Act also established a Committee of Secrecy of three members which was to send orders of the Board of Control to India in matters requiring secrecy without informing the other directors.<sup>13</sup> As a matter of fact this Act reduced the Court of Proprietors to insignificance and very much curtailed the power of the Board of Directors enhancing thereby the power of the crown. Though the patronage was still in the hands of the Directors, the crown could recall any servant of the company.

While thus modifying the constitution and powers of the Company, the Act also made certain changes in its administration. The members of the Governor General's Council

<sup>12</sup> These were to be members of the Privy Council.

<sup>13</sup> This Secret Committee of Directors not exceeding three was to be appointed by the Directors themselves.

were reduced from four to three, one of whom was to be the Commander in Chief. The Governor General was also given a casting vote. A similar provision was made for the presidencies of Bombay and Madras also. Those presidencies were now placed more definitely under the control of the Governor General in Council. But at the same time the Governor General in Council was now allowed to make war or peace without the sanction of the Directors or the Secret Committee.

Thus we see that the Pitt's India Act while leaving to the Company its commercial powers placed it as regards its administrative powers under the control of the ministers.

This Act had also its defects and in 1786 an Amending Act was passed to remove them. Among other things it was provided that the Governor General had the right to override his council and act on his own initiative.

#### *Governor Generalship of Lord Cornwallis*

During the time of Lord Cornwallis important reforms were introduced into the administration. His most important measure of reform was the permanent settlement of land revenue. There had been experienced very great difficulties in the settlement and collection of land revenue so after much deliberation and controversy the system of permanent settlement was introduced. In 1789 a settlement was made for ten years but in 1793 this settlement was declared to be permanent for the provinces of Bengal and Bihar. Later on the system of permanent settlement was extended to some other parts also. The system implied that the Government would receive from the zamindars fixed revenue which could not be changed. Therefore the assessment of revenue was made as high as possible. This system still operates in the provinces of Bengal,

Bihar and part of the United Provinces

During this time some important reforms were introduced in the administration of justice and the jurisdiction of various courts was defined. At the same time the law was also improved. These judicial reforms elevated the position of the law courts and established in the words of Ross "The supremacy of the law and law courts over all persons whatever".<sup>18</sup>

It may also be noted that in 1788 an Act was passed which further strengthened the control of the Crown over the company. It also empowered the Board of Control to send royal troops to India and required the company to pay for them. This was an important step.

In 1793 the Charter Act was passed which renewed the company's charter for 20 years. It did not make any important changes either in the administration of India or in the power and constitution of the company. It allowed other Englishmen to carry on trade with India under certain restrictions and it also allowed Christian missionaries to come to India under licence.

### *Early part of the 19th Century*

In the early part of the 19th century the system of Ryotwari settlement was introduced in the province of Madras. In this system the ryots pay revenue direct to the Government. In this connection we may mention the name of Munro who in various capacities introduced important reforms in the province of Madras. He did not only commend this system as the indigenous system of the country but also attached great importance to village panchayats. These reforms were commenced from the very beginning of the

century, though they were finally adopted later on. Judicial reforms including confinement of powers on village headmen and panchayats were carried out by regulations passed in 1816 and the Ryotwari settlement was finally adopted in 1820. Munro himself was the Governor of the province from 1820 to 1827.

Before the reforms took their final shape, the Charter Act of 1813 had been passed which renewed the company's charter for another twenty years. This Act did not interfere with the Company's administrative power but introduced other important changes. It threw open the trade of India to all Englishmen keeping the trade of China still a monopoly of the company for another twenty years. It also permitted missionaries to come to India without any license but it provided for a strict system of license for the coming of other Europeans into this country.

An important feature of this Charter Act was the encouragement of education for which it was provided that a sum of rupees one lakh should be set apart annually for the promotion of education. This was the first attempt by the British Government in India to encourage education among Indians.

#### *The Governor Generalship of Lord William Bentinck*

Important constitutional changes were made during the tenure of Lord William Bentinck who was Governor General from 1828 to 1835. The first notable feature of his reforms was the reversal of the policy of Lord Cornwallis and appointment of Indians to higher service. This was done by regulations issued in 1831. He also reformed the administration of justice and established for the North West Provinces (the present U.P.) a separate sudder or chief court. He also established a Board of Revenue

for these provinces at Ailahabad

Another important feature of his reforms was the introduction of the vernacular in place of Persian as court language and the introduction of English in place of vernacular as the medium of education. The former made the work of the litigants easier. The latter measure while supported by Lord Macaulay and others was opposed by Dr Wilson and others. It was finally adopted in 1835.

### *The Charter of 1833*

During the time of Lord William Bentinck important constitutional changes were made by the Charter Act of 1833 which was passed when twenty years fixed by the Act of 1813 had elapsed. This Act introduced changes both in the administration of the country and in the commercial powers of the Company. The question now arose whether the company should be allowed to continue to exercise its administrative powers. But parliament did not find itself prepared to take up the administration of India itself. Therefore the Company was allowed to continue as a governing body and its Charter was renewed for another 20 years but important changes were made in the administration. The Governor General who was so far known as the Governor General of Bengal was henceforth styled as the Governor General of India. At the same time the members of his council were increased to four by the addition of a law member. The Governor General in Council was now empowered to pass Acts instead of Regulations, as they were known so far, which would apply to the whole of India. But the provinces of Bombay and Madras were deprived of legislative powers which were however restored later on. The Act also constituted a separate presidency of North West Provinces but it was soon after made a

province of a Lieutenant Governor

A very important feature of this Act which cannot be too much emphasised is its expression of policy. It laid down in clear words that "No native of India, nor any natural born subject of His Majesty, should be disabled from holding any place, office, or employment by reason of his religion, place of birth, descent or colour." This enunciation of a general principle is very important in the administrative history of British India.

As regards the commercial powers of the Company, this Act abolished all monopoly and divested the Company of its commercial character in India. Its assets were bought and it had to dispose of its magnificent merchant fleet. Thus the Company now ceased to exist as a commercial body.

This Act like the Regulating Act and the Pitt's India Act is an epoch making Act in the history of British administration in India.

### *The time of Lord Dalhousie*

During the time of Lord Dalhousie apart from the reforms which he himself introduced in the administration including the military side, there are two important matters demanding attention—the Renewal of the Company's Charter in 1833 and the laying down of a scheme of education for all India.

The period of twenty years after 1833 having elapsed in 1853, the question of the Company's Charter rose again. This time too the charter was renewed not for a specified period as had been hitherto the practice but during the pleasure of parliament. Certain changes were also made in the administration. Bengal, Bihar and Orissa were made a separate province under a lieutenant governor and the Governor

General was relieved of the responsibility of administering it. So far he had, apart from his duties as the Governor General, directly to administer these provinces also

Certain changes were also made in the constitution and powers of the Directors of the Company and they were deprived of their patronage the appointment to the civil service being henceforth thrown open to public competition for which an examination was to be held in England

The scheme of education referred to above was contained in the celebrated document known as the Despatch of Sir Charles Wood of 1854. It laid the foundation of vernacular education and also provided for establishment of Universities, colleges, and aided schools. Lord Dalhousie in furtherance of the educational policy, organised a distinct Department of Public Instruction in each presidency and planned a University for every province though the establishment of Universities was delayed for a few years. The first universities to be established were those of Calcutta, Bombay and Madras which were opened in 1857.

#### *Transference of Administration from the Company to the Crown*

The Indian Sepoy Mutiny of 1857 was a great shock and it roused a great feeling against the Government of the East India Company. This resulted in passing by parliament in August 1858 of an Act for the better Government of India. This Act transferred the right of the Company to govern its Indian dominions to the Crown. This step was taken in spite of the protest raised by the Directors. But apart from making this important change which itself was of very great constitutional importance, little was done to modify the administrative system then existing. There was made a slight change in the title of the Governor General who was

henceforth to be styled the Viceroy and Governor-General of India. In England the Board of Control ceased to exist and the place of its president was taken by a Secretary of State for India who was to be assisted by a Council known as the India Council consisting of fifteen members. The Secretary of State was made responsible to parliament.

### *Queen's Proclamation*

Though this Act did not introduce any change in the actual administration, it was followed by the Queen's proclamation which, announced by Lord Canning at Allahabad on 11th November, 1858, enunciated important principles of policy which tended to change the spirit of the administration and to satisfy the Indian people and princes. Announcing the assumption by the Queen of direct control over the administration of India, the proclamation made it clear that the administration would now be carried for the benefit of the people. It clearly said, "When by the blessing of Providence internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement and to administer the government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security and in their gratitude our best reward."

The proclamation laid down the policy that all the subjects of the Queen will be treated equally and they will have equal rights of employment. The Queen clearly said

"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil." "And it is our further will that, so far as may be, our

subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge".

Another important principle enunciated by the proclamation was that of religious toleration and equality of all under the law. The Queen expressly said

"Firmly relying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure, that none be in any wise favoured, none molested or disquieted, by reason of their religious faiths or observances but that all shall alike enjoy the equal and impartial protection of law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure"

The proclamation also announced the policy to be adopted towards the princes. It said

"We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted and will be scrupulously maintained and we look for the like observance on their part

"We desire no extension of our present territorial possession and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others

"We shall respect the rights, dignity, and honour of native princes as our own, and we desire that they as well as our

own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government."

*Important Legislation during the time of the 1st Viceroy*

Soon after the transference of the power from the Company to the Crown important legislation was introduced to reform the Indian administration. At the very outset three important Acts, namely, The Indian Penal Code, The Criminal Procedure Code and The Civil Procedure Code were passed.

The first two regulated the administration of criminal justice while the third one defined the procedure of civil court. Apart from this legislation the Government of Lord Canning, the first Viceroy and Governor General, carried out other important reforms including the reform of the military administration. So far, there used to be two classes of forces, one called the Crown forces and the other called the Company's forces. But henceforward all these forces were amalgamated into one.

Another very important reform was effected by the Indian High Courts Act passed in 1861 which abolished the old Supreme Court on the one hand and the Sudder Diwani Adalat and the Sudder Nazamat Adalat on the other and established a High Court of Judicature in each of the presidency towns of Calcutta, Madras and Bombay. Later on High Courts were established in other provinces also.

The year 1861 is further important for the passing of the Indian Councils Act. This Act is a statute of very great constitutional importance because it sowed the seed of representative institutions. This Act provided for two councils for the assistance of the Viceroy. One was to be known as the Executive Council and the other as the Legislative Council. The former was to carry on the administrative work and

the latter was to make laws. The Executive Council was what had been so far known as the Viceroy's Council. It consisted of four members before this Act which enhanced the number to five. With respect to the Legislative Council, provision was also made for the inclusion of non official members and the Viceroy was empowered to nominate such members.

### *Later Reforms*

After 1861, we do not find for the rest of the 19th century much legislation affecting the Indian constitution very materially. However, certain reforms and legislative measures are noteworthy.

Lord Mayo who was viceroy from 1869 to 1872 introduced a reform of decentralization giving to the provincial governments more powers than they were then exercising. He empowered them to spend their revenues and also handed over to them certain departments for administration, for example, the police, the jail, the education, etc. Lord Mayo also established a new Agricultural Department.

In 1876, an Act was passed known as the Royal Titles Act which, though it made no change in administration, changed the title of the ruler and the Queen and the King of England were henceforward styled the Empress and Emperor of India respectively. A proclamation to the effect was made at Delhi on the 1st of January, 1877. Such a change though not material has an effect on the minds of the subjects and is also important from the point of view of constitutional nomenclature.

The next measure of constitutional importance was the reform of Lord Ripon, who was viceroy from 1880 to 1884, in the matter of local self government. This refers to the constitution of District Boards, Taluka Boards and Muni-

icipalities. Before these reforms, there were municipalities in certain towns but now it was provided that every city would have a Municipal Board and every district would have a District Board. These Boards were to work under the general supervision and control of the Collector of the district. The members of these Boards were partly nominated by the Government and partly elected by the people, and it was also provided that as far as possible the chairman of a Municipal Board should be non-official. The work entrusted to these Boards was the management of education, sanitation and health, etc. in their respective areas. To carry on their work they were empowered to collect certain taxes and to incur expenditure. A Municipal Board looks after the affairs of the city while a District Board looks after those of the rural areas. A Taluka Board looks after the affairs of a Taluka, a sub-division in southern provinces.

The next important constitutional measure was the passing of the Indian Councils Act of 1892. This Act increased the number of members for the imperial as well as the provincial legislative councils and also provided for the inclusion of more non-official members. At the same time provision was made for the representation of various interests like the Municipal Board, the District Board and the University.

### *The Twentieth Century*

During the twentieth century much reform has been introduced into the administration, important constitutional changes have been made and the policy of the British government towards British India has been enunciated. Leaving out the minor reforms introduced by the several viceroys

for example the formation of provinces<sup>15</sup> by Lord Curzon, or the various reforms of Lord Reading including the holding of ICS Competitive Examination also in India since 1923, we have among the most important constitutional documents the Indian Councils Act of 1909, the declaration of policy by the Secretary of State on 20th August, 1917, the Government of India Act of 1919 and the proclamation of the Emperor on 25th Dec 1919 and lastly we have the present Government of India Act of 1935.

### *The Indian Councils Act of 1909*

From the very beginning of the twentieth century, we find political agitation in the country for the reform of Indian administration particularly with a view to secure more and more popular control over the administration. This, in practice, comes to mean chiefly a demand for more and more popular representation in the legislative bodies, responsibility of the executive to the popular legislature and Indianization of the services.

The Indian Councils Act of 1909 was an important step in the constitutional advance on the lines indicated above. It increased the number of additional members in the legislative councils and provided for a non official majority in the provincial councils, though an official majority was retained in the imperial council. At the same time the

<sup>15</sup> Lord Curzon constituted for the better government of north west frontier a separate province called the North West Frontier Province and re named the old North West Province as the United Provinces of Agra and Oudh. He also divided Bengal into two parts and formed two provinces one known as Bengal and Bihar and the other as Eastern Bengal and Assam with Dacca as its capital but this measure aroused much opposition and it was finally cancelled by the proclamation of the Emperor on December 12 1911. This proclamation made another very important announcement declaring that the capital of the Government of India would thenceforward be Delhi instead of Calcutta.

scope of activity of the councils was also extended. Another noteworthy feature of the reform of these councils was the introduction of the principle of election side by side with nomination. All these reforms are collectively known as the Morley-Minto<sup>16</sup> reforms. To give administrative powers to Indians an Indian member was appointed in the executive council of the Viceroy and in the provincial executive councils also the same principle was adopted. At the same time two Indians were also made members of the India Council of the Secretary of State. These reforms were certainly far short of the demand and they could not satisfy the Indian people. Still they represent a definite advance in the constitutional development of the country and in any case they prepared the way for further reforms.

#### *The declaration of policy in 1917*

While the Great European War was raging and India was taking her full share in sacrificing her men and money for her Emperor an important announcement of policy was made by Mr. Montague the then Secretary of State for India on the 20th of August 1917. This declaration was also an important step towards constitutional reform in India. It was clearly announced that

The policy of his Majesty's government with which the Government of India are in complete accord is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire.

<sup>16</sup> Mr. Morley was then the Secretary of State for India and Lord Minto was the Viceroy. The latter held office from 1905 to 1910.

While making this announcement of policy, the Secretary of State also made it clear that progress in this policy could only be achieved by successive stages and that "The British Government and the Government of India . must be the judges of the time and measure of each advance "

### *The Government of India Act of 1919*

This declaration of policy was followed in 1919 by the Government of India Act<sup>17</sup> which not only introduced important reforms in the Indian administration but almost completely changed the organisation of the Indian legislature and established an altogether new system of Government in the provinces. In order to understand the main features of this Act, we shall first deal with that part of the administrative machinery which is located in England, then with the central Government in India and finally with the provincial governments.

### *The Secretary of State*

So far the salary of the Secretary of State for India and cost of maintaining the India Office had been a charge on the Indian revenues. But the Act now provided that henceforward they were to be charged on the English revenues. At the same time, the Act also provided for the appointment of a High Commissioner for India in London and his

<sup>17</sup> In 1915, an Act was passed known as the Government of India Act. Its purpose was to consolidate enactments relating to the Government of India. It repeated in whole or in part 47 Acts connected with the Government of India so far beginning from the East India Company Act of 1770 down to the Government of India Act of 1912. In the Act of 1919 this Act of 1915 has been referred to as the principal Act and the Act of 1919 is an Act to make further provision with respect to the Government of India.

salary and the cost of maintaining his office were to be borne by the Indian Government.

### *The Central Administration*

In the central Government, the legislature was divided into two houses: one, the upper house, was called the Council of State, while the other, the lower house, was called the Legislative Assembly. The former was to contain sixty members of whom 33 were to be elected members and not more than twenty should be official. The latter was to contain 120 members of whom 100 were to be elected ones with a provision of increase of members. The powers of these councils were also increased and it was provided that the Viceroy could not be the president of any of these and the president of the Council of State was to be appointed by the Governor-General from amongst its members, while the first president of the Legislative Assembly was to be appointed by the Governor-General and his successors were to be elected by the members themselves. The term of life of each Assembly was to be three years and of each Council of State was to be five. The Viceroy was given power to veto the decision of the legislature when he thought it necessary to do so.

The number of members in the Executive Council was also increased and three Indians were appointed as members of the Council.

### *Provincial administration*

In the provincial legislative council, the number of members was increased and it was provided that at least seventy per cent of the members should be elected and not more than twenty per cent should be official. Its term was to be

three years and while its first president was to be appointed by the Governor, his successors were to be elected by the members themselves. The Governor was also given the power of veto like the Governor General.

For the executive administration, the Act established a kind of dual government known as diarchy. According to it the departments of administration were classified in two divisions, the one of reserved departments and the other of transferred departments. The former were to be administered by the Governor with the help of his executive council. Such departments were revenue, police, law and order etc. The latter i.e. the transferred departments were to be administered by the Governor with the help of his ministers. Such departments were those of education, public health, local self government etc. The ministers were to be appointed by the Governor from the elected members of the Legislative Council. For the Executive Council it was also provided that at least half of the members should be Indians.

While introducing these reforms in the provincial administration, the Act also increased the powers of the provincial governments and raised the United Provinces, Central Provinces, Bihar and Orissa, Assam and the Punjab to the rank of Governor's provinces.

#### *The importance of this Act*

The reforms introduced by this Act are collectively known as Montague Chelmsford<sup>18</sup> reforms and they came into force from the 1st of January 1921. This Act was a great advance

<sup>18</sup> Mr. Montague was at the time the Secretary of State for India and Lord Chelmsford was the Viceroy of India who was in office from 1916 to 1921. Previous to the passing of this Act these two held an inquiry in India about introducing constitutional reforms and published their report known as the Montague Chelmsford Report.

towards the constitutional development of India. It inaugurated almost a new era. The preamble of this Act reiterated the declaration of policy made in 1917 by the Secretary of State.

It is important to note that the Act made a provision for the appointment of a statutory commission at the expiration of ten years after passing of this Act for the purpose of inquiring into the working of the system of Government, the growth of education and the development of representative institutions in British India and matters connected therewith. And the commission was to report "as to whether and to what extent it is desirable to maintain the principle of responsible government or to extend, modify or restrict the degree of responsible Government then existing therein, including the question whether the establishment of a second chamber of the local legislature is or is not desirable".

#### *The King's proclamation*

The Act was passed on the 2<sup>nd</sup> of December and on 25<sup>th</sup> the Emperor made a proclamation in which referring to this Act he said, "The Act which has now become law entrusts the elected representatives of the people with a definite share in the Government and points the way to full responsible government hereafter." He also said that "A new era is opening", so that it was made clear that now the Crown recognized full responsible government in India as the final goal of administration and the Act pointed the way to that goal.

This proclamation is important in another way also. There was the provision for establishment of a chamber of princes. The Emperor said in his proclamation that

"Simultaneously with the new constitution in British India, I have gladly assented to the establishment of a Chamber of Princes. I trust that its counsel may be fruitful of lasting good to the princes and the states may advance the interests which are common to their territories and to British India and may be to the advantage of the Empire as a whole."

The chamber was established in 1921. This step was also of great importance in the constitutional history of India and it provides to the princes a scope for consultation with each other and for taking united action. It also paved the way for a sort of federal understanding between the princes and British India.

#### *Later attempts*

As has been mentioned, the Act of 1919 made a provision for the appointment of a statutory commission to enquire into the working of the constitution after ten years. This commission was appointed a little before its time and it gave its report. At the same time much agitation for further reforms had been going on in the country and the Government in order to arrive at some sort of a consensus of opinion convened a Round Table Conference which held its sitting in London three times. As a result of all these it was found that a federal constitution for India in which the states also will be included is likely to be most successful.

Then the Government published a White Paper in 1933 embodying their proposals for the future constitution of India. It provided for the establishment of a federal government for the whole of India including the states.

#### *The Government of India Act of 1935*

Now the new Government of India Act, 1935, has been

passed and important changes will be introduced into the administrative machinery. The most important of all is the provision for establishing under certain conditions of a Federation of India under the Crown embracing the British Indian Provinces and the Indian states. The executive authority of the federation shall be exercised by the Governor-General who will have a council of ministers not exceeding ten to be chosen by him to aid and advise him<sup>19</sup>. Such ministers should be members of either chamber of the federal legislature. The federal legislature will have two chambers to be known as the Council of State and the House of Assembly or the Federal Assembly. In the provinces the diarchy is to be abolished and the executive head will be the Governor who will have a council of ministers to aid and advise him. The provincial legislature will have two chambers in the provinces of Madras, Bombay, Bengal, U. P., Bihar & Assam and one in the other province. For judicial administration a Federal Court will be established having both original and appellate jurisdiction. As regards the Secretary of State his India Council will cease to exist and he will have a body of advisers between three and six.

<sup>19</sup> But in the matters of the ecclesiastical affairs, external affairs and the tribal areas the Governor-General will not have reference to the ministers and may appoint counselors to assist him not exceeding three.

*The Modern Awakening**The present day position*

That modern times have witnessed a remarkable awakening in numerous spheres of Indian life is a fact which cannot be seriously challenged. It is true that such persons can be found who would regard the present progress as either a myth or a retrograde step. Again there are present some thinkers who would in all seriousness advocate a return to nature giving a preference to primitive society over the present. Such a view however does not command a great following and, on a serious consideration of the facts of present life, does not appeal to the common man. It is not denied that certain aspects of the present day position do display a misuse or even abuse of certain acquired powers<sup>1</sup>, none the less, sound thinking would not deprecate the acquisition of such powers but would simply suggest a reform to direct in a more proper channel the human energy which may be found flowing in a wrong course. At any rate a clear understanding of the various aspects that the present day life in India is presenting proves beyond the least shadow of a doubt that there has been in recent times a remarkable awakening in the country which is promising to bear fruits and it is for the right thinking people to see

<sup>1</sup>For example the destruction wrought by means of scientific improvements in destructive engines or the unfair tactics sometimes adopted for sinister ends even by men of education and so on.

that the awakened man enjoys and prospers in broad sunshine and not allows himself to fall in a ditch.

### *Main Divisions*

To appreciate this modern awakening, we have to see the present day life in its important aspects separately. For the sake of convenience it would be desirable to divide our subject of study into four main departments (1) Social and religious, (2) Political including national and international, (3) Educational and (4) Commercial and industrial. Not that life can be so departmentally divided into water tight compartments specially in India. On the other hand there will be found much overlapping. However, this division is necessary for the purposes of study and clear appreciation of the main currents of the present day thought and mode of life.

### 1. SOCIAL AND RELIGIOUS

#### *The old order & need of reform*

The first signs of awakening in the modern period were visible in the social and religious life of the people. After the decay of the Mughal Empire there appeared a sort of disintegration in the Indian society and even the religious bonds became loose. The people of India who were reputed as particularly virtuous allowed various forms of vices including even horrible criminality to eat into their society. At the same time an influx of western ideas reacted upon their habits and ideas. As a result of this state of affairs, certain people felt a glaring need of reform and tried to introduce

\* The coming of the foreigners and chiefly the English brought in its wake firstly Christianity secondly a notion of common brotherhood and ideal of nationality and thirdly new scientific inventions.

various reforms into the life of the people. In consequence, several movements were started and societies founded in order to achieve the desired goal.

*The lines adopted*

In general there was felt a reaction against the old order which had created dissatisfaction in various ways. The chief points assailed were the old ceremonials, blind following of religious precepts and continuance of certain institutions which were believed at best to have outgrown their utility<sup>3</sup>. In consequence, we find the various movements driving at a reform of the old order with a view to remove (a) in the religious sphere mere formalities of religion and superstitious or unfounded beliefs and blind adherence to outgrown ideas, (b) in the social sphere the bondage of the caste system and restrictions and inequities resulting therefrom and certain customs like early marriages. So that religious reformers laid a great stress upon the unity of Godhead<sup>4</sup> and tried to substitute for the old continuing superstitious and almost blind faith which had in certain cases degenerated into a gross abuse of religious authority a kind of philosophic religion based more or less on reason. The social reformers similarly advocated a rupture from the old order inculcating on the people the necessity and utility of a common brotherhood which would ignore the old restrictions imposed by the caste system and would like to lead society in accordance with the ideas of freedom<sup>5</sup>. They also strongly

<sup>3</sup> For example the caste system, idol worship, pilgrimage etc.

<sup>4</sup> It is unnecessary to say that both Hinduism and Islam advocate strongly the unity of Godhead. There is sometimes a misunderstanding about Hinduism but it clearly says that Brahma is the supreme Deity.

<sup>5</sup> Even in the earlier times strong opponents of the caste system had appeared for instance the founders of Buddhism and Jainism.

deprecated certain habits which tended to lower the standard of life, for instance, dirtiness, wastefulness and perpetual discouragement of certain classes of people. But at the same time certain reformers clearly realised the evils of a wholesale introduction of new ideas and either advocated a revival of certain old ideas with necessary modifications<sup>6</sup> or an acceptance of the new ideas to the extent beneficial under the changed circumstances.

### *Various Societies.*

Now we come to the various movements and shall see how the above-mentioned ideas are illustrated in the teachings of their leaders.

Among the various sects or societies established for the reform of the existing society and religion, there stand most prominent (1) The Brahma Samaja, (2) The Ārya Samaja and (3) The Theosophical Society. It is significant to note that all these have been termed 'societies' (samaja means society).

### *The Brāhma Samāja*

The Brahma Samaja (the society or congregation of God) was established at Calcutta in 1828 and formally opened in 1830 by Rāja Ram Mohan Roy.<sup>7</sup> After him its famous leaders were Debendra Nath Tagore and Keshab Chandra Sen during

<sup>6</sup> For example Swami Dayanand Saraswati's urge for remodeling life according to Vedic principles.

Raja Ram Mohan Roy was born in 1772 and was a Brahmana by caste. He was well read and knew various languages including Arabic, Persian, Sanskrit, Pali, English and Greek. He studied many religions but believed in the Upanishads. He wanted to reform the existing society and religion and first founded in 1816 the Atmaja Samaja which was crushed by the orthodox people. Then he founded the Brahma Samaja. His chief doctrine was the unity of God and he strongly opposed idolatry. He tried to remove various social evils also and at his art exhibition the custom of sati

whose time the Samaja underwent many changes and modifications chiefly in the direction of more radical reforms. Ultimately the Samaja was broken up into two main divisions the *Adi Samaja* and the *Sadharana Samaja*. The latter which was formed in 1878 advocated a radical reform of society.

The principal doctrines of the *Brahma Samaja* are —

#### *A Religion*

1. There is one God who is the creator and everything else is created. Consequently only God and no created object is to be worshipped. The *Adi Samaja* says that God is a personal being with moral attributes, while the *Sadharana Samaja* says that He is a spirit and infinite in power, wisdom etc. and is eternal, omniscient and blissful.

2. God does not appear in a created form. Consequently the theory of incarnation is incorrect.

3. God should be worshipped. But the way to His worship is *not* asceticism, attendance in temples or observance of certain forms. He should be worshipped in a spiritual manner. True worship according to the *Sadharana Samaja* is to love God and to carry out His will in all concerns of life. His worship is open to all persons irrespective of caste or creed.

4. God hears and answers prayers. He rewards virtues and punishes vices. But His punishments are not eternal. They are only remedial.

was abolished by law in 1829. He professed to advocate a return to the pure religion of the Upanishads and believed that he was restoring the Hindu faith to its original purity. It is noteworthy that he himself never abjured caste. He went to England in 1830. The representative of the Mughal dynasty entrusted to him a mission and conferred upon him the title of Raja. He died in Bristol in 1833.

5 True salvation is union of God in wisdom, goodness and holiness. The way to salvation is divine worship and repentance. Sincere repentance and cessation from sin lead to forgiveness.

6 Human soul according to the Sadharana Samaja is immortal and responsible to God for its actions. It is capable of infinite progress. The Raja never believed in the transmigration of soul.

7 No person or book is infallible or sole means of salvation. The Ādi Samaja says that nature and intuition are the sources of knowledge of God.

8 True religion according to the Sadharana Samaja consists in the belief of fatherhood of God and brotherhood of man and in kindness to all living beings.

### *B Social.*

1 There should be no distinction of caste in society, for it is futile.

2 Untouchability<sup>3</sup> should be abolished.

3 There is nothing wrong in widow re marriage.

4 Conventionalism and blind adherence to old traditions should be discouraged.

5 The custom of early marriages should be removed.

6 Polygamy should be discouraged.

### *The Ārya Samaja*

The Ārya Samaja was founded at Bombay in 1875 by Swami Dayanand Saraswati<sup>4</sup>. Soon after, he founded an Ārya

<sup>3</sup>Untouchability refers to the system under which a person of a higher caste regards persons of certain lower castes as untouchables meaning thereby that if the former touches the latter he becomes impure and needs purification by bath etc.

<sup>4</sup>Swami Dayanand Saraswati was born in 1824 in the Morvi state of Kathiawar in a wealthy Brahmana family and his original name was Mul

Samaja at Lahore which eclipsed the earlier one of Bombay. Thenceforward, Lahore became the head quarters of the Movement. In 1892 the Ārya Samaja was divided into two branches in which one was more progressive.

The principal doctrines of the Ārya Samāja are —

#### *A Religious*

1 God is one and He must be worshipped. He is eternal, almighty etc., and to Him alone is worship due.

2 There are three things which are eternal (i) God (ii) Soul and (iii) the elemental matter (prakṛiti).

3 God should be worshipped spiritually. Idol worship is improper. Sacrifice should not be made.

4 Pilgrimages are useless and superstitious.

5 The theory of incarnation is incorrect.

6 The Vedas are the true source of knowledge, divine, religious and scientific. They are eternal utterance of God. Other Hindu scriptures are valuable but not authoritative.

7 The theory of transmigration and 'karma' is true and is taught by the Vedas.

8 Salvation is emancipation from transmigration and can only be attained by good deeds. Forgiveness is forever impossible.

9 Virtue must be cultivated and all actions must be done conformably to virtue. One must always be ready to accept truth and renounce untruth.

#### *B Social*

1 The distinction of caste must be abolished. All are to be treated with love, justice and due regard to their merits.

*Sankar* He fled from home in 1846 in search of Mokṣa (salvation). He was initiated into the order of Sanyāsīs and renamed Dayanand. He died in 1883.

2 The practice of widow re marriage should be adopted in cases of virgin widows.

3 Marriages should be celebrated when the bride and bridegroom are fully grown up

4. People should shape their lives according to the teachings of the Vedas

5 Sanskrit learning should be encouraged as it is necessary for social improvement Every Ārya man and woman must read or hear the Vedas

6 Ignorance must be dispelled and knowledge diffused

7 One should consider the interests of others and should not aim merely at his own good The primary aim of the Samāja is to do good to the world by improving physical, spiritual and social conditions of mankind One should regard one's prosperity as included in that of others

### *The Theosophical Society*

The Theosophical Society was founded in 1875 in New York by Madame Blavatsky and Colonel Olcott and carried much farther by Mrs Besant and C W Leadbeater in recent years The headquarters of the new movement were removed to Adyar (in Madras) in 1882

The society gives a system of religion, science and practical life It purports to be the final truth of the Universal, preached in various ages by various persons but revealed anew to Madame Blavatsky<sup>10</sup> by certain Masters and Mahatmas in Tibet and elsewhere.

The main principles of the society are —

#### *A Religious*

1. There is one God, the absolute, infinite and all em-

<sup>10</sup> She died in 1891 and after her death Mrs. Besant became the most important personality in the Society

bracing

2 We can know nothing of God at the present stage except that He (It) exists

3 In God there are innumerable universes From Him we have come and into Him we shall return

4 His seven ministers are the planetary spirits and under them are the Devas

5 Man is a spark of the Divine power

6 The ego does not die with death Man is reborn after death but he can never be born an animal Every one must go on to the end This is a class in which no student fails

7 As the Supreme is unknowable He is not to be worshipped Only the masters are to be adored

8 All religions when presented contained the fundamental truth but at present only Hinduism and Buddhism retain and teach the truth of the ancient wisdom

9 The Society believes in occultism but keeps it secret This results in complete subjugation to the Gurus and through them to the leaders of the Society

10 A great teacher is to visit the world soon

#### *B Social*

1 All men are equal and the distinction of caste is improper

2 There should be a brotherhood of all human beings

3 We should think for ourselves and act according to reason and not be guided by accepted practices or common prejudices

4 Conventionalism should be discarded

#### *Other societies*

Apart from these, a large number of societies have been established with more or less social, religious, political or

humanitarian purposes, some of which may be briefly noticed. We may classify these according to their purposes in view. Certain societies aim at a general organisation of the old society with a view to introduce reforms and increase their social and political weight in the country. Such for instance are the Muslim League<sup>11</sup> established in 1905 and the Hindû Mahasabha.

Among the Hindus there arose various other sects and societies aiming at social and religious reform for example the Prâarthanâ Samaja founded in 1807 whose aims were theistic worship and social reform. Its leader was Dr. Atma Ram Pandurang. Its beliefs are much the same as those of the Sâdharana Samaja. The social reforms aimed at by the Samaja are chiefly (1) abandonment of caste, (2) introduction of widow remarriage, (3) encouragement of female education and (4) abolition of child marriage. Then we have the Râdhâ Swami Satsang which gives a place of supremacy to the Gurû who is the source of revelation and essential means of salvation. The first gurû publicly proclaimed his doctrines in 1861.

The Christians also established various societies to promote social and religious interests, for example the British and Foreign Bible Society which has been working in India since 1811 and has got a number of auxiliaries in India. Then there is the Young Men's Christian Association<sup>12</sup> which is making remarkable progress in this country. Its chief aim is to satisfy the social and spiritual, physical and mental needs of the youths by various activities. It may be noted that it comprises people of various races and nationalities. Similarly we have the Young Women's Christian Association. This

<sup>11</sup> It was mainly a political organisation to secure political rights for the Muslims but it was also its aim to promote inter-communal unity.

<sup>12</sup> It was founded in 1844 by Sir George Williams.

serves a counterpart to the other association of men. It was founded in 1875 and it also aims at the social and spiritual, mental and physical development of the younger members of the female sex. Then there are associations for the protection and promotion of certain communal interests among the Europeans and Anglo Indians. For example, the Anglo-Indian League which was established in 1909, the European Association which is mainly a political organisation, and the British Indian People's Association which aims at the protection of the interests of Indians, Anglo Indians and domiciled Europeans. There is again the Women's Indian Association which was established in 1917. Its aims are social, political, educational and religious. It has opened branches all over the country. It has given rise to several women's conferences.

An organisation of its own kind is the National Indian Association which strictly adheres to the principle of keeping aloof from political controversies and non-interference in religious affairs. It aims at social and educational reform in India and promoting friendly intercourse between Indians and the people of England, increasing in England and among the English people an interest in India and Indians.

### *Service Societies*

Another class of associations aims at rendering service to the general population or a particular class of people. The most important of these associations may be said to be the Servants of India Society. It was founded in 1905 by G. K. Gokhale. Its headquarters are in Poona and it has branches in various important cities. Its work is of a general nature and it tries to promote the interests of the Indian people in various spheres of life and its activities are brisk in political, social, economic and educational fields. It also

cares for the interests of the Indians overseas. It stands to the credit of this Society that some of its members have founded various other service societies. A very useful organisation is the Seva Samiti which is working in Northern India. It renders various services to the people including the provision of educational institutions and medical dispensaries. It has an important institution known as the Boy Scouts Association, which is doing remarkable work specially in managing crowds in places of pilgrimage. The Seva Sadan is another very useful institution which was founded in 1908 by B. M. Malabari. It aims at training women for the service of the poor and the needy, the sick and the distressed. It provides instructions both literary and industrial and also a place for the homeless. There are also certain local Seva Sadans, the most important of them being the Poona Seva Sadan. Another organisation of a similar nature is Bhagini Sabha of Gujarat. Again there are various local service leagues in various provinces.

### *Maternity & Child Welfare*

Much attention has also been devoted to the protection of children and various organisations have been started for that purpose. We have the maternity and child welfare movement which has achieved marvellous successes. The Red Cross Society which began its work in India after the commencement of the Great European War is doing a great deal not merely for the sick and the wounded but also to promote child welfare and help proper nursing. The All India Maternity and Child Welfare League which has now been amalgamated with the Red Cross Society forming the Maternity and Child Welfare Bureau is also doing useful work in the various provinces. Again there is the All India Baby Week founded by Lady Reading in 1913 which is also doing

useful work. The Boy Scouts<sup>13</sup> movement and the Girl Guides movement are also of real value.

### *Particular interests*

Another class of associations is concerned with particular interests, for example the various Chambers of Commerce, the various co-operative societies, trades unions, labour societies etc. All these show a sign of determined effort to remove the existing evils.

### *Class Consciousness*

It may also be noted that apart from the general awakening witnessed in various spheres of life, we find a regular class consciousness among the various classes of the population, particularly among the lower classes. Various factors both social and political have contributed to produce a feeling that certain classes have been suffering at the hands of certain other classes and that now in these days of freedom such a state of affairs should not be allowed to continue. As a result of all these we find various societies and conferences working for the uplift of the depressed or the suppressed classes. As a counter movement, however, we also find that the higher classes are also organising societies and conferences to improve their position.

### *Awakening among females*

A very noteworthy feature of the social awakening in India has been the awakening among females. Education

<sup>13</sup> There are a number of Scout Associations working in India, the most important being the Baden Powell system of Boy Scouts and the Seva Samiti organisation of Boy Scouts. The former aims at training boys into good citizens. The Chief Scout of India is the Viceroy himself and the patron is H. R. H. the Prince of Wales.

is fast spreading among them and there are various societies formed for the reform of the existing system. Particularly the *parda* system<sup>14</sup> has been stoutly assailed and it is now losing ground. Marriage reforms are also in progress and both public opinion and Government efforts are combining to eradicate the evils of child marriage and compulsory prohibition of widows to remarry again<sup>15</sup>.

### *State Effort.*

We have noticed so far what may be termed private or popular efforts at reform. However, there is also traceable in the history of Indian reform an attempt by the Government at social reform. Long ago, in the days of Raja Ram Mohan Roy, the Government of Lord William Bentinck tried to abolish the cruel system of *Sati* by legislative measures. Later on, the Government of Lord Ellenborough passed the Indian Slavery Act in 1843 to prohibit slavery<sup>16</sup>. Again the Government has tried to introduce reforms into the Indian society by passing certain legislative measures modifying or altering in part personal law or custom, for example, the Caste Disabilities Removal Act No. 21 of 1850, The Hindu Widow Remarriage Act No. 15 of 1856, The Special Marriage

<sup>14</sup> This system refers to the seclusion of women from public life and from coming out in public. It may have had its value at some period of Indian history, but at present it is only an important cause of social, political, economic and educational backwardness of women. It may be remembered that the ancient Hindu practice does not sanction such a system and we actually come across very learned and highly advanced ladies in ancient India. Even now this system is not operative among the lower classes in whom females and males both work and earn outside their homes.

<sup>15</sup> Government helps the movement mainly by legislation such as the Widow Remarriage Act, the Child Marriage Restraint Act etc.

<sup>16</sup> It may however be remembered that long before the advent of the British power in India and long before the abolition of slavery in England and other western countries the Governments of India, for example, the Government of Akbar had abolished slavery.

Act of 1872 and the Special Marriage Amendment Act No 30 of 1923 The Dissolution of Native Converts Marriage Act No 21 of 1866, The Hindu Succession Amendment Act No 7 of 1929 and the Child Marriage Restraint Act of 1929, have all introduced important changes in the existing Indian society Moreover, the Government also tries to help popular movements and private efforts at reform

## (2) POLITICAL INCLUDING NATIONAL AND INTERNATIONAL

### *Political awakening & its nature*

The political awakening is evinced by a rapid growth of Nationalism, a more and more intense demand for Democratic institutions and an all round demand for freedom As a matter of fact the student of Indian Political History will be amazed to see the advance which the country has made during the last fifty years It is no exaggeration to say that the political leaders of even the latter part of the last century who founded institutions for the attainment of political progress could not dream of the amazing changes which their own institutions have undergone by this time This proposition is very well illustrated in the History of the Indian National Congress as we shall presently see

The chief line of advance has been towards popular control of the administration and full representation of the people as a whole and of various classes and interests chiefly in the legislative bodies and the public services We find a general awakening among the various classes of the Indian population and the different interests This awakening is a kind of self consciousness which is impelling them to try for more political power and weight, both in this country and in the world at large

*Its causes*

Various causes have contributed to produce this political awakening in India. In the first place too much stress cannot be laid on the present condition of the people. The peace and security of life which followed as a result of stable administration after the long interval of misrule and anarchy coming after the decay of the Mughal empire gave the people both an opportunity and an impetus to realise their position and to try to improve it.

In the second place, the preceding misery and disintegration which had aroused some serious thinking people to introduce reforms in the social and religious life, now working with certain new forces, directed the attention of certain people towards political life. After some success in the social and religious sphere was achieved, people began to think on the one hand of their political position and its amelioration and on the other of the neglect of the Government in not taking the necessary steps for their progress. As a result of this, demands were made to reform the administrative machinery and to bring about political advancement of the people. Gradually organisations were formed and concerted demands were made. Thus we find that the social and religious awakening paved the way for the political awakening.

In the third place, the spread of education was also largely responsible for this awakening. Whatever may have been the state of education in the early Arvan Buddhist or palmry Mughal days, it was clear that India immediately preceding the British advent was simply uneducated or at best most inadequately educated. Therefore gradual spread of education was a very important feature of Indian life and it has done much to arouse political consciousness among the

people It may be noted that education with all its faults and defects due to the ingrafting of a foreign element has brought into this country important and appealing ideas of democracy nationality and freedom Moreover, it has also made easily accessible the scientific inventions of the other countries of the world

As an effect of all these not only an important advance has been made towards progress but India has become a conscious part of the whole world The present political Nationalistic ideas are gradually giving way to Internationalistic ones So that India is also marching with other progressive countries of the world

This leads us to another cause of the Indian awakening, which is the closer contact with the West This has been facilitated partly by the spread of Western education partly by the intimate contact with the British people and partly by India's taking part in the world affairs The last mentioned factor has assumed a great importance since the time of the Great European War India not only took an important part in the actual war but was also represented in the various International Bodies which have been sitting since then It may be mentioned that she was a founder member of the League of Nations

In this connection, it may be mentioned that the remarkable rise of Japan has also given an impetus to Indian Nationalism

### *A Reaction*

It has been noted that India has become conscious both of her nationality and of her international position It is now important to note that a close contact with the West has also brought to her knowledge certain glaring evils of the Western society As a result of this, there has appeared

a reaction against certain features of the Western life. In the political world for example, we find a denunciation of nationalism by Dr. Sir Rabindra Nath Tagore. We also find a denunciation of Western methods by Mahatma Gandhi. On the whole, therefore, we find that while the country has awoke primarily to welcome the West, it is also getting conscious of its own superiority in certain matters over it. In consequence there is a movement for revival of the ancient ideas and institutions in a modified form and for observing great caution in adopting the Western ideas and modes of life. The consciousness is gaining ground that the materialistic civilisation of the West is bound to yield to the spiritual, peace loving and humanitarian civilisation of this country.

#### *India's International position*

Reference has been made above to India's taking part in the world affairs. As a matter of fact her international position has grown to be very important, so much so that it cannot be harmonized with her constitutional position as determined by the Government of India Act. Though Indian art, literature and culture had begun to be appreciated by foreign scholars long ago, it was not until the Great European War that her political position in the international affairs received a fair recognition. Since then her importance is growing and she has fully justified her admission to international councils. By virtue of her being a signatory to the Peace Treaty of Versailles of 1919 she became a Founder Member of the League of Nations which was inaugurated in that year by a Covenant embodied in the Peace Treaty.

The Covenant contains twenty-six articles dealing with

membership and machinery of the League guarantees against aggression disputes and their settlement, mandatory and social activities etc. The preamble to this covenant mentions the aims of the League and the methods of achieving them. The aims are to promote international co-operation and to achieve international peace and security. The methods are —

(1) The acceptance of obligations not to resort to war

(2) The prescription of open just and honourable relations between nations

(3) The firm establishment of the understanding of international law as the actual rule of conduct among Governments and

(4) The maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another

India is the only non self governing state which is a member of the League so that she has found a place among the self governing countries and dominions of the world. This position is not consistent with her being a dependency of Britain. Therefore while she does not enjoy the status of a self governing dominion, she is nothing less than such as regards her international position.

It may be mentioned that she has sometimes taken quite an independent stand even in opposition to Great Britain in some of the international conferences. It is to her credit that on many occasions she has taken the lead in forming world opinion towards achieving the aims of the League.

India has taken part in all the assemblies of the League and also in some of the important non League interna

tional conferences such as the Washington Conference on Naval Armaments in 1921, and her representatives have made notable contributions. She is also represented in several permanent bodies of the League, the most important of which is the International Labour Office. Her position as one of the first eight states of industrial importance has been recognized and now ranking with Great Britain, France, Germany, Belgium, Italy, Canada and Japan she is also represented on the Governing Body of the organisation, of which body Sir Atul Chatterji, an Indian, was elected the Chairman in 1932 having acted for a long time as its Deputy Commissioner. The discussions of the International Labour Conference have yielded greater results in India than probably in any other country. In the discussions themselves India plays a very prominent part.

Among other bodies of the League on which India is represented may be mentioned the Committee of Intellectual Co-operation. This committee was appointed in 1921 and it deals with matters of education and science. It consists of twelve members only, one of whom is a representative of India. The aim of this committee is to foster international co-operation in matters intellectual. It also helps backward countries in their intellectual advancement. India is bound to play an important part in this committee, for her culture is now gradually being more and more appreciated.

Now it is important to note that India's rise in international status has had manifold results. In the first place she has become more conscious of her importance in the world. In the second place she is coming more and more in line with the world opinion. In the third place she is

herself taking an important part in shaping the world opinion. But more than this the world is taking a keen interest in India and is realising her importance. Partly on account of her ancient and high culture, her art and literature and her sublime attitude on life and partly on account of her vast resources able to make her a great world force both from cultural and political points of view she has very much attracted the notice of the world and there is no wonder if she again in near future leads the world in civilization as she is known to have done in the past. People are gradually realising this position and are now fully conscious that India must play an important part in the future politics of the world. Professor Zimmern has aptly remarked that India is the pivot of world politics in the coming generation.

### *Prominent Ideas*

The most prominent ideas connected with the modern awakening in the political sphere are.

(a) Democracy (b) Popular Representation (c) Woman suffrage (d) Self Government & (e) Federation

### *Democracy & Representation*

Democracy has become the fashion of the day and though in some of the Western countries it has been supplanted by Dictatorship or autocratic authority and its evils are now gradually appearing yet it still holds the ground in the political field. Democracy essentially means control of the administration by the people. A movement towards this has been gradually gaining ground in this country. Now the only form in which the present day conditions permit the general body of the population to exercise its authority in adminis-

tration is through representation which may be of several kinds and by several means, so that there is a general demand for increasing representation in the Legislature and the services. The question of Representation has gradually assumed the form of communal, sectarian or other narrow representation. In a sense, it displays political consciousness among the various classes and interests of the people. But on the whole, it has created a problem which seriously demands a proper solution, in the absence of which it is materially detrimental to the interest of the people.

### *Woman suffrage*

Connected with the question of representation is the movement known as the woman suffrage movement. This refers to the enfranchisement of women, that is, their representation in the legislative bodies through their own votes. This movement is very recent and as a matter of fact rose during the war time with the general political agitation for self government. It was in December, 1917, that the first claim for woman suffrage was made by the All India Women's Deputation in its address to the then Secretary of State, Mr. Montague. Since then, the movement has been fast spreading and it has achieved a remarkable success, and various associations are trying for the emancipation of the women. It stands to the credit of certain Indian States, namely, Travancore, Cochin and Rajkot that they have completely abolished the sex disqualification from their Statute Book. In British India also much progress has been made but still much remains to be done. However, it is gratifying to note that women now are enjoying the right of vote and have also found seats in various legislative bodies, municipal corporations and even in services. It must be

remembered in this connection that while on the one hand the Democratic and Representative theory of the West and the extreme veneration for women in India, the high place assigned to them both as a mother and as an indivisible half of man, have helped in the progress of this movement, on the other hand, the absence of adequate education and persistence of the parda system are great hindrances in its way. The new Government of India Act of 1935 has now removed the sex disqualification and has also reserved certain seats for women in the Legislatures.

### *Self Government*

The movement for Self Government<sup>1</sup> has taken various shapes. While some people have believed that it is necessary in the interests of India to have full independence implying thereby a severance of the British connection<sup>2</sup>, others have held that British connection is necessary and Dominion Status, by which I meant the status enjoyed by the British Dominions of Canada, Australia and others, is the only suitable form of Self Government for India. Again there has been a great divergence of opinion about the methods advocated for the attainment of this goal. Some have believed in Constitutional Demand and Agitation, some have believed in Boycott and Non Cooperation, some have believed in Civil Disobedience and Satyagrah<sup>3</sup>, while some others have believed

<sup>1</sup> Various terms have been used with various shades of meaning to connote this idea for example Self Government, Home Rule, Autonomy, Dominion Status and Swaraja.

<sup>2</sup> For instance the Indian National Congress in its session of December 1919 passed a resolution of complete independence and it declared at the commencement of the new year complete independence hoisting the Independence Flag.

<sup>3</sup> Satyagrah was a term used by Mahatma Gandhi to indicate a form of Civil Disobedience in which moral pressure is placed upon the opposite

in Revolutionary methods and propaganda. All this is certainly a great sign of political awakening though there sometimes appears a *misdirection of national energy*.

The ideal of Self Government has been greatly materialised in the sphere of provincial and local administration as is clearly evinced by the progress of local self-Government and growth of provincial autonomy.

### *Federation*

The movement for Federation is of a comparatively recent origin. It has substantially materialised only since the time of the Round Table Conference<sup>20</sup>. The White Paper published by the Government in March, 1935, laid out a scheme of federation which also finds place in the report of the Joint Parliamentary Committee. It is certain that the future Government of India will be federal and the new Government of India Act of 1935 has now made provision for the formation of a Federation of India.

By a Federal Government in India is meant a central Government, which would embrace both British India and Indian States, with local Governments in the various provinces of British India and in the larger states and in groups of smaller states in Indian India<sup>21</sup> which will be the several administrative units autonomous in internal administration and subject to the Federal Government in Federal matters that is, matters of all India importance.

The advantages to be derived from such a federation are

power to achieve a particular end by refusing to give way but taking no active steps and peacefully suffering any penalty inflicted.

<sup>20</sup>The Round Table conference held three sessions beginning in November of 1930, 1931 and 1932 respectively.

<sup>21</sup>This is a term often used to indicate the Indian States as a whole to distinguish them from the other part of India known as British India.

numerous. In the first place, it will ensure the national and political unity of the country and will result in economic and administrative uniformity. In the second place, the federated units will be able to administer their territories in accordance with their individual needs. In the third place, both the parts of India that is, British and Indian, will mutually gain from each other, British India gaining in statesmanship, military forces and discipline, and experience of autonomous rule of the Indian states, Indian India gaining from the vast resources, political organisation and administrative experience of British India.

As against all these advantages, there may be set forth certain disadvantages also, for example, the larger states may feel a sentimental loss in becoming subject to the Government of India. Again their independent activities might be checked. For British India, the danger may come from the backwardness of certain neighbouring states. Lastly, certain autonomous units may fall behindhand in the general progress.

#### *Organisations & Associations The Indian National Congress*

Having seen the general features of the political awakening, we shall now briefly notice the various organisations and associations formed for the purpose of achieving various ends. The most important and by far the most influential organisation is the Indian National Congress. It is representative practically of the whole country<sup>22</sup> and wields an amazing influence on the masses. It was founded in 1885 and had its first sitting in Bombay. Its founders were both Europeans and Indians but the chief credit belongs to Mr.

<sup>22</sup> In the beginning the Muslims kept themselves aloof from the Congress but later on they also joined it in 1907.

Allan Octavian Hume who was a retired member of the Indian Civil Service. The Congress as originally founded aimed firstly at a national union of the different classes of the Indian population and its progress and regeneration in all social and political, mental and moral spheres of life, and secondly at consolidation of union between India and England by trying to remove the conditions detrimental to the interest of this country. In 1907, there occurred a change in the Congress creed which now aimed at the attainment of a status enjoyed by the self governing members of the empire, that is, what is usually called Dominion Status. The methods to be adopted were constitutional, intended to unite the people, develop their resource and reform the administration. The third stage arrived in 1930 when the Congress passed entirely into the hands of the extremist wing under the complete domination of Mahatma Gandhi. And after some years in 1949, it declared complete independence hoisting in the beginning of the next year the independence flag. Thus the Congress which started with the aim of uniting India and England ultimately adopted the creed of complete independence and total cessation from the British Empire. During recent years, the Congress has been functioning as a bold critic of the administration and has often adopted an antagonistic policy, for example, of non-cooperation, civil disobedience and Satyagrah. It must however be noted that it has always advocated peaceful means, even at the risk of great suffering, to achieve its ends.

#### *The National Liberal Federation*

The next important organisation representative of the country as a whole is the National Liberal Federation

It was founded in 1918 as a result of a breach between the extremist and the moderate sections of the National Congress. It is chiefly an organisation of the moderate party and, as its very name indicates, is liberal. Its creed has also changed but not very radically like that of the Congress. In the beginning it adopted the principle of the old Congress. Later on, it adopted Dominion Status as its goal. It may be noted that for some time since 1927 this Federation joined hands with the Congress but when the Congress adopted the Independence resolution the Federation again disapproved its extremist methods. In general, the Federation is a critic of the evils of present administration and aims at a reform, which would increase the popular control, by constitutional means.

#### *The Muslim League & All Parties Muslim Conference*

It has been noticed above that the Muslims in the beginning kept aloof from the Congress. In 1907, they started a separate organisation called the Muslim League. It was a communal organisation to protect the interests of the Mussalmans only. Some years after, the League aimed at self Government in the British Empire. In 1928, another organisation known as the All Parties Muslim Conference came into being and the influence of the League declined.

It is important to remember that among the Muslims there has been a kind of division. Some Muslims usually called Nationalists have stuck to the Congress while others believe that the present Congress activities may be prejudicial to their interests and they have tried to formulate their demands separately on a communal basis.

#### *Other Associations*

Among other ~~associations~~ <sup>associations</sup> having political ends may be

mentioned the Home Rule League initiated by Mrs. Annie Besant and the Indian League of Nations Union. These two organisations are, unlike the Muslim associations non-communal, so much so that they include even non-Indians. The Union has a noteworthy feature of embracing the Indian states also and it is gratifying to note that its president is H. H. the Maharaja of Bikaner.

A more or less communal organisation is the European Association which aims at organising political influence in Indian political life. The Association was established in 1883, but its present name dates from 1911. It has got a number of branches throughout the country.

An important local association is the Western India National Liberal Association. It was founded in 1919 and its aims and objects are clear from the very name. It is a moderate party organisation. It aims both at political progress and material and moral welfare of the people.

### *The Women's Indian Association*

The Women's Indian Association has been noticed earlier as a social organisation but it has a political object. As a matter of fact, it was the only Indian Women's society which had specifically adopted the woman suffrage as one of its objects. This Association is an all-India body having branches throughout the country and it has secured various social and political reforms including franchise. It aims at adequate representation of the women in various central, provincial and local bodies and securing for them equality of rights and opportunities with men.

### *The Chamber of Princes*

The Chamber of Princes is in name as well as in fact an

association of the rulers and chiefs of the Indian states. It is also called Narendra Mandal. His Majesty the King Emperor in his famous Proclamation of December 25, 1919, had given his approval for establishing this Chamber, but it was inaugurated on the 8th of February 1921 by H.R.H. the Duke of Connaught. It is a recommendatory body and considers questions regarding the princes, their position and rights. Formerly its sessions were held in camera but now since 1929, they have been made ordinarily open to the general public. The Chamber may play a more important part when the federal constitution is introduced in the country embracing British India and Indian States under one Federal Government.

### 3 EDUCATIONAL

#### *The important movements*

The awakening in the sphere of education is evident from the progress made in this line, which will be dealt with at length in a later chapter. In this place we shall notice briefly some of the important movements and organisations relating to the subject.

#### *Diffusion of knowledge*

At the outset we observe certain remarkable features of the educational awakening. In the first place, there is a movement towards diffusion of knowledge in general and to attain this purpose provision is made for mass education, and in certain places, particularly in certain areas, even compulsory education has been introduced, though its progress is very slow chiefly due to the poverty and ignorance of the masses.

*Cultivation of different branches of learning*

In the second place, there is a movement for cultivation of different branches of learning, for example history mathematics, anthropology, medicine fine arts etc. For this purpose various societies and associations have been formed.

*A common language*

In the third place, there is a movement towards making one particular language the common language of the country. This movement has had to face almost insurmountable difficulties and even now its success is not clear and definite. The chief difficulty is that various parts of the country have various languages of their own some of which are so rich and advanced that it is not easy to supersede them in their respective places by any other language. Then there is a suggestion that English may be made the common language but the difficulties with this appear to be even greater. For not only is this language known to very few of the people but the introduction of a completely foreign language throughout the whole country is certainly much more difficult than the introduction of a much less foreign language of one part of the country into the other parts. It may be admitted that English is almost a world language and at present it is necessary for some people at least in all parts of the country to know this language chiefly because of its political importance. Yet apart from the numerous difficulties including the poverty of the people the costliness of this education, the long time which it must necessarily take it is not in the interests of a country from the cultural point of view to supplant its own language or languages by a totally foreign language. It is specially detrimental to the growth of fine literature. Then there is the choice between the

various Indian languages. Of these some which should have been suitable from the point of view of range and richness are so completely confined to particular parts of the country and are written in so particularly different scripts that their introduction in other parts would both be difficult and unwelcome. Such for instance are Bengali, Tamil, and Telugu. The two important languages which are spoken more widely than the above named languages are Hindi and Urdu. Now of these two Urdu is spoken in both Western and Southern India in various parts of the country, but Hindi has superiority over it in the following respects.—Firstly it is derived from Sanskrit from which most of the languages of India are derived. Hence there is a community between Hindi and many other languages of India. Secondly, it is written in the Devanagari script in which or in a slightly modified form of which are written Sanskrit as well as many of the modern Indian languages. Both in these two respects Urdu is in a very disadvantageous position. Thirdly, a number of the languages are merely modified forms of Hindi, for example, Marathi and Rajasthan. And fourthly it is a more scientific language having a very scientific alphabet and its literature is fine, rich and varied, and embodies in greatest measure the cherished traditions of the country. For these reasons Hindi has a greater chance of becoming the common language of India. Already in the several provinces, people whose mother tongue is other than Hindi are trying to spread the knowledge of Hindi in non Hindi speaking parts and the Nagari Pracharini Sabha is also rendering great service in this direction.

#### *Vernaculars as media of education*

In the fourth place, there is a movement for substituting

the vernacular as the medium of instruction in the place of English. The chief difficulties which this movement has to surmount is the lack of books in the vernaculars, particularly on most of the scientific subjects. This difficulty is however gradually being removed by the efforts of various individuals and associations. This movement has already achieved some success<sup>23</sup> and is expected to achieve greater success in the future.

### *Encouragement & revival of Indian learning*

Lastly there is a movement towards encouragement and revival of Indian learning. It has taken two different forms. Firstly, there is an attempt to enrich the vernaculars and encourage their study. For these purposes various associations have been started, for example Hindi Sahitya Sammelan, the Hindustani Academy and other societies. It is gratifying to note that the Government also helps the movement both by giving financial aid, for example to the Hindustani Academy and by recognising these subjects for study in higher classes, so that on the one hand bodies like the Hindi Sahitya Sammelan have introduced examinations in the vernaculars upto a very high standard like the Master Degree. On the other hand the various universities and colleges are now teaching the vernaculars even in their highest classes. Secondly, attempts have been made to revive ancient learning and ancient institutions. In this also the Government has rendered some help. There have been opened in certain places schools and colleges on the models of ancient institutions and are variously known as Gurukul, Rastkul etc.

<sup>23</sup> Already in many places the departments of education have allowed the vernaculars to be the media of instructions upto the Entrance Examination and in some places upto higher classes also.

At the same time attempts have been made to revive ancient medical study by opening *Āyurvedic* or *Tibbi* institutions. For the encouragement of Indian learning some of the Indian states have also taken an important part, for example, Hyderabad has done much for the study and enrichment of Urdu.

### *Art and Literature*

The development of art and literature in India has a long and glorious history. The specimens of art coming down from the third century before Christ to the seventeenth century after him bear full testimony to this observation. Some of these specimens are still a marvel and display extremely good taste, fine decoration and superb execution. The cave temples of Ajanta alone, which were only discovered in 1816 by accident, show finest examples of architecture, sculpture and painting.<sup>21</sup> In the ancient period we find various styles of art named chiefly after the various religions which furnished subjects for the artists, for example, Buddhist, Brahmanical and Jaina styles. In the medieval period development of art reached the highest stage in the time of Shah Jahan whose *Tāj Mahal* will always be remembered as a marvel of architecture.

Music also in all its three forms of singing, dancing and playing on instrument was most highly developed in ancient India not only as an art but also as a science. In the Mughal days again it reached a high stage of development.

After the decline of the Mughal rule, however, all this glory passed away. However, in recent times some attention has been devoted to the cultivation of fine arts and schools

<sup>21</sup> It may be noted that sculpture and painting in isolated works of art are hardly to be found in the history of Indian art except in the modern times.

of art have been introduced chiefly in Calcutta and Bombay. It deserves special mention that some of the fine arts have been introduced in the educational institution, for example, music, drawing and painting. The country therefore seems alive to the needs and utility of the fine arts.

As regards literature it may safely be said that India possesses not only the most ancient literature available in the world in her Vedas, but has also got highest specimens of various branches of literature, especially, religious, philosophic, didactic, epic and dramatic. The Vedas, the Upanisads, the Mahabharata, the Mahanataka and other works of literature are still unsurpassed.

After the ancient period we notice the growth of various languages with their literature in different parts of the country. Several of these reached a high stage of development, for example, Bengali, Hindi, Urdu, and Tamil. It is noteworthy that the contact of Hindu and Muslim cultures gave rise to various schools of thinkers who enriched their mother tongues by their preaching and writings.

Again it is strange to find that some of these languages produced good literature even in the hard days of India's political decline, for example, Urdu.

In the field of literature also the modern times have witnessed a marked awakening, the chief feature of which is the attention towards scientific and more practical branches of literature. Though we are no longer having poets like Tulsidas, still there is enrichment of the literature by addition of works on various subjects of study like science, politics, economics etc. Nor can we say that poetry and drama are dormant. Sir Rabindranath Tagore the winner of Nobel Prize has vastly enriched the Bengali literature by his poetry and drama. In other languages also we have poets and dra-

matists of repute As a matter of fact drama appears to be growing in modern times<sup>20</sup>

#### *Societies & Associations*

To understand the nature of various activities regarding the cultivation of different branches of learning we may note some of the important societies which have been formed for the purpose Some of these are —The Indian Association for the Cultivation of Science at Calcutta, the Indian Institute of Political and Social Science (founded in 1917), the Indian Mathematical Society (founded in 1907), the Indian Society of Oriental Art, the Anthropological Society of Bombay, the Bombay Branch of the Royal Asiatic Society (founded in 1804), the Bharat Jihasa Sansodhak Mandal, Poona (founded in 1910), Bhandarkar Oriental Research Institute, Poona (founded in 1917), the Benares Mathematical Society (founded in 1918), the Indian Chemical Society (founded in 1924) and many others

### 4 COMMERCIAL AND INDUSTRIAL

#### *Nature of the awakening*

The general awakening of India has also embraced the commercial and industrial side of her life It has generally manifested itself in two different ways In the first place, people have become conscious of the industrial backwardness of the country and want to improve its industries In the second place, due to various economic and political causes there has developed in the country a movement for the use of

<sup>20</sup>It is generally observed that drama finds a congenial place only in times of national awakening and enthusiasm We know for example that Kalidasa flourished in the Gupta age and Shakespeare in the Elizabethan age

swadeshi i.e. India made goods

### *The industrial position*

As has been observed above India is pre eminently an agricultural country. Yet her industries also are of great importance and she ranks at the International Labour Office as one of the first eight industrial countries of the world. But considering her extensive area, huge population and vast resources she is still very backward. Her industries are very few in number and they are concentrated in a few areas. The largest is the cotton textile industry. The most important centres of this industry are Bombay, Ahmedabad, Sholapur and Nagpur. Then comes the jute industry which is confined to Calcutta and the neighbouring places. Then comes the metallurgical industry. Its chief centre is at Jamshedpur. This industry is, however, of recent growth.

### *Means of improvement*

Various methods have been adopted both by the people and by the Government to foster Indian industries and make her industrially more prosperous. As a result of all this we observe that her manufacturing industries are now of growing importance. The chief means adopted for fostering the industries are the following —

1. *Imparting of industrial training.* Various Government and Municipal institutions are now imparting training in various industries like dyeing and printing, leather work, sugar manufacture, carpentry etc. Mechanical and engineering schools and colleges are also imparting technical training. The public is very much alive to the need of increasing such institutions and blames the Government for lack of due atten-

tion It must, however, be said that the Government are taking keener interest every day and trying to satisfy the country's demand as far as practicable having regard to their finances They also allow scholarships for such training Private enterprise is also helping in the matter Still much remains to be done in this direction The general poverty of the country is also responsible for the industrial backwardness of the people who very often cannot receive technical education on account of lack of funds

2 Passing of Acts to protect particular industries A protective tariff is laid on import of the goods which are sought to be protected and thereby it is made difficult for foreign manufacturers to compete in the Indian market with India made goods Imposing of duties in this manner not only secures protection to the Indian industries but also brings in revenues to the Government Among such Acts may be mentioned the Indian Finance (Supplementary and Extending) Act of 1931, which imposed duties on certain articles and increased the duties already imposed on certain others the Steel Industry (Protection) Act of 1931, the Gold Thread Industry (Protection) Act of 1931, the Heavy Chemical Industry (Protection) Act of 1931, the Wire and Wire Nail Industry (Protection) Act of 1932 the Bamboo Paper Industry (Protection) Act of 1932 and the Sugar Industry (Protection) Act of 1932 etc.

3 Encouraging the use of Indian manufactures This is done in a number of ways some of which are even objectionable from various points of view The Government themselves encourage this by

purchasing India made goods whenever convenient. The policy of the Government is to encourage the development of industries to the utmost possible extent consistent with economy and efficiency. People start propaganda for this purpose and preach the benefits of using such goods. But sometimes enthusiastic preachers resort to annoying picketting. This however was used rather as a political stratagem when the political tension in the country was great, and is no more resorted to now.

Among other means may be noted the direct encouragement of industries by providing funds or affording purchasing, selling or banking facilities etc.

#### *The Swadeshi movement*

The Swadeshi movement in India has assumed a great importance, for it is not confined in scope to the economic side of her life only. Its aim is also political. So that this economic measure is often adopted to secure political ends. The idea behind it is to bring economic pressure to bear on those countries whose exports to India are considerable. Therefore the other side of the Swadeshi movement is the boycott of foreign goods and it cannot be doubted that this has considerably reduced the volume of Indian trade.

#### *Volume of trade*

The volume of trade has enormously fallen from what it was a few years back. The reasons for this are numerous. In the first place, after the post War boom was over a period of decline in trade set in and there was economic depression in the country. In the second place, the

purchasing power of the consumer in India has been very much lowered and consequently his purchases have declined. In the third place the political situation has been tense in the country and the movement of Swadeshi coupled with the sister movement of boycott of foreign goods has done much to effect the decline in the volume of trade. However, recently there has been a revival and both imports and exports are rising. The imports were at lowest in 1931-32 while the exports were at lowest in 1932-33. The figures of 1934-35 show a distinct improvement.

The following figures indicate the course of trade in India —

Year	1913-14	1928-29	1931-32	1932-33	1933-34	1934-35
Imports	183	190	143	162	146	172 crores of Rs
Exports	244	260	200	176	209	216 crores of Rs

### *Some pressing problems.*

Having seen the form and nature of the modern awakening in India, we may now briefly notice some of the pressing problems which have faced the country and are demanding immediate solution. The chief of these are connected with 1 Nationalism and Internationalism 2 Unity and Communal Interests 3 Depressed classes 4 Women 5 Labour and unemployment 6 Federation and 7 Indians outside India. Each of these will now be briefly dealt with.

*Nationalism & Internationalism*

It has been observed above how Nationalism is gaining ground in this country. At the same time, it has also been observed that the economic interdependence of different parts of the world, the political developments after the Great War and a consciousness of the crying evils of nationalism have produced a reaction in favour of internationalism, so that the present day India is faced with the problem of developing herself on Nationalistic lines in order to guard her national interest keeping in view the general international goal and conforming with the principles of Internationalism. Though, generally, the need is felt of national growth there are not wanting critics who have denounced that Nationalism, for example, Dr Sir Rabindra Nath Tagore. However, a happy feature of the situation is the Indian outlook on life which is not confined within the limits of nationality. The gradual progress of internationalistic ideas in the world is sure to facilitate the solution of the Indian problem. As a general principle it should be observed that we should keep as our goal internationalism and should develop nationalism only to the necessary extent.

*Unity & Communal Interests*

A very difficult problem before the country at present is the maintenance of unity in face of strong and active communalism. The chief difficulty has arisen with regard to political rights and in spite of the various conferences including unity conferences and in spite of the Communal Award recently given by the premier the problem has remained without a proper solution. In details the question centres round the protection of minority communities and their

interests in Legislative bodies and public services. It may not be forgotten that the minority problem is a world problem and the recent constitutions of various European countries have tried to solve this problem in particular ways. In India itself opinion seems to be divided on many points. Apart from the question of the degree of weightage both in the services and as regards representation which has to be decided having in view a number of factors and also on higgling and bargaining, the two fundamental questions remain, whether firstly proportional or preferential representation should be secured in joint electorates or separate electorates and secondly whether all or only some and if the latter which ones of the services should be subjected to communal representation.

As regards the question of electorate a joint electorate is conducive to political unity and likely to ensure the election of candidates who are national rather than communal in their outlook. To this extent, however, the extreme communalists may regard it as disadvantageous. A separate electorate on the other hand will perpetuate communal separation and is likely to return members who will be much more of a communal than of a national outlook. This may not only lower the tone of legislative bodies but may also produce constant wrangling. It will however satisfy certain extreme communalists.

As regards the services, it is only fair to say that the question of representation as a principle should be kept aloof from them. Otherwise, their efficiency is bound to suffer, for in nomination to services, the only consideration should be the qualifications of the nominees and the efficiency of their work. And if certain communities find that their members are not upto the mark they should on the one hand try to improve

their culture and on the other find for them other avenues<sup>26</sup> and services. Otherwise apart from efficiency suffering, such communities will also ultimately suffer, because on the one hand they will lose the incentive to increase their efforts, on the other they will debar certain of their members from following other professions for which they may be more suited. However, if representation has to be made as a political expediency it should be confined within as narrow limits as possible keeping such services as require greater efficiency aloof from such a system.

### *The Depressed Classes*

The problem of the depressed classes in India has assumed immense proportions during the last few years. This problem is difficult of solution in all its three important aspects, social, religious and political. The simple facts about the question are that certain classes are looked down by certain others and not only is social admixture between the two well nigh impossible but the former are not allowed even admission to various religious places, nor are they allowed equal opportunities for economic and educational progress. This state of affairs largely accounts for their political backwardness. The modern awakening has aroused a great class consciousness which has been referred to earlier in this chapter and now the joint efforts<sup>27</sup> of certain advanced members of

<sup>26</sup> Experience tells us that while certain persons or classes of persons are quite efficient in one kind of work they are inefficient in various degrees in other kinds of work. For example, Marwaris and Baniyas are first class traders but hardly efficient soldiers.

<sup>27</sup> In this connection we may mention the peculiar efforts of Mahatma Gandhi who preaches the gospel of anti untouchability and to secure his objects sometimes adopts the method of fasting or a threat to end his life if his object is not achieved.

the depressed classes and certain sympathetically minded persons of the higher classes together with the assistance of the Government are producing appreciable results towards the needed reform. The Government is helping the movement partly by legislation, partly by securing representation in legislative bodies and services and partly by offering preferential opportunities for education to the members of the depressed classes. It may, however, be observed that in the methods adopted by the Government, great caution is necessary in the interests of the efficiency of services and also with a view to secure non interference by the Government in matters purely religious or even social.

### *Women*

The problem of women is also both social and political, social in respect of parda system which has been referred to above and political with respect to representation. This problem, however, has found its solution and it is now only a question of time how long it will take to bear full fruits. In the solution of this problem certain societies, reference to which has already been made earlier, as well as certain members of the other sex together with the help of the Government have achieved remarkable successes.

### *Labour & Unemployment*

The problem of labour and unemployment has also become very serious. It can be divided into two problems, one of labour and the other of unemployment. The former would deal with actual labourers and their condition, while the latter would deal with those who have got no employment in spite of their efforts and necessary qualifications. As

regards the former the solution has become easier because the Government has by legislation (for example the Factories Act) regulated labour conditions in factories, fixing the hours of work, ages of young workers and certain other conditions of employment. The labourers themselves are now conscious as a class and have formed various societies to achieve their ends and sometimes resort even to strikes. Again the League of Nations has taken a very important part in trying to ameliorate the conditions of labourers. The International Labour Conference adopts Conventions or Recommendations for regulating the employment of labourers and India as a state member of the conference is bound to adopt and ratify them wherever possible.

The problem of unemployment, however, has become more serious. As a matter of fact unemployment has become a world problem but there is a great difference between the Indian problem and the world problem, for the world problem has to be solved by providing work to industrial labourers in times of industrial depression as there is not much scope for them to fall upon agriculture, while in India the problem is different. Here industry is not in an advanced stage and the proportion of industrial labourers is comparatively small. The country being still mainly agricultural, industrial labourers in times of industrial depression can to an important extent fall back upon agriculture, and in times of agricultural depression, that is, in times of famine etc. the Government devises means of relief and private help is also bounteous. The problem, however, is serious in the case of educated classes. Though the country is very inadequately educated, still partly due to absence of scope in industries and partly due to the nature of present education which is mainly literary and only nominally tech-

nical or industrial, most of the few educated persons that there are fail to find an employment for themselves. They cannot even fall back upon agriculture because firstly they are not suitable for that and secondly the present agricultural position in the country does not need or value their education, and as for agriculture on modern scientific lines, it is not practicable in a poor country where holdings are small and scattered. It is for these reasons that the educated unemployment has become a serious problem in the country. Various provincial Governments have appointed committees to report upon the problem and to suggest the solution but the problem still stands unsolved.<sup>28</sup> It may, however, be observed that a solution will be in sight if industrial resources of the country are increased and developed, various industries are started and encouraged, provision is made for more and more technical and industrial education and arrangements are made to settle a proportion of the unemployed on land. The last mentioned method will necessitate an advance in agricultural methods, diffusion of agricultural education and rearrangement of holdings.

The suggestion is sometimes made that literary education should be stopped or curtailed in order to solve this problem. But this would appear to be a method which without solving the problem is likely to produce other serious evils. As has already been observed India is very inadequately educated as will be proved by the figures given in the chapter on education and to check even this education would simply be disastrous. The fallacy which makes the present

<sup>28</sup> As regards the United Provinces the report of the unemployment committee which was presented over by the Rt. Honble S. Tej Bahadur Sapru has been published. The report gives many valuable suggestions and the Government are taking steps to help the unemployed.

education appear as more than necessary or destrable springs up from the fact that so few people have received technical and industrial education. What is needed in this connection is an increase in education everywhere with only a difference of degrees that is, technical and industrial education should occupy the first position primary and secondary education second and higher education third.

### *Federation*

The question of federation has been dealt with earlier and will also be dealt with in connection with the Central Government and in connection with the States. Here it may be observed that the problem of federation is not whether we should have a federal or a unitary system of administration, because political events are rapidly moving towards federalism and the Government of India Act of 1935 has now made provision for the establishment of a federal government. The problem is now only about the details of powers to be enjoyed by the Federal Government and the constituent units as also powers of and their exercise by the Crown. An offshoot of the problem will be about the powers of different states which vary most considerably as regards their rights, treaties, size and revenues. The new Act has settled most of these points and it is to be seen how it works.

### *Indians outside India*

We shall now deal with the problem which has arisen in connection with Indians settling abroad<sup>29</sup>. What

<sup>29</sup> The total number of Indians resident in foreign countries is according to the latest figures available 23,33,201 of which 22,32,676 is the number of those resident in British Empire.

constitutes a problem in this matter is related to Indians emigrating to or settling in the other parts of the British Empire. Among these parts there will be two divisions, the dominions and the colonies. The question is about the rights of those countries to restrict Indian immigration and to place such disabilities upon the settled and domiciled Indians as they please.

### *Question of immigration*

As regards the question of immigration and the restriction on it, the matter has been almost settled for the time being with respect to the dominions, for the resolution passed in the Imperial War Council of 1918 affirming the right of each community to control and restrict immigration has been mostly accepted in India as regards the dominions. But as regards the colonies India claims equal rights of immigration which the citizens of the other parts of the Empire exercise.

### *Question of treatment of dominions*

As regards the question of treatment, the problem varies in seriousness in different countries. It is least serious in New Zealand and Newfoundland where the governments have not placed Indians under disabilities. It is more serious in Australia and Canada, still more serious in South Africa and most serious in the colonies particularly in Kenya. In the Imperial Council of 1921 the representatives of the dominions except those of South Africa accepted in principle the justice of the Indian claim but in spite of this resolution and in spite of Mr. Sastry's mission to some of the dominions in 1922 to consult with the governments with a view to giving effect to this resolution and despite the fact

that the mission achieved some success several of the dominions have not given practical effect to this resolution

### *South Africa*

As regards South Africa the problem has been serious much because the number of Indians settled there is great. The greatest trouble is chiefly in Natal and Transvaal. However efforts have been constantly made to secure just treatment for Indians. In 1914 as a result of Mahatma Gandhi's passive resistance movement some compromise was arrived at which found expression in the Indians' Relief Act of 1914 and Smutts-Gandhi agreement. However the position was not satisfactory and a more serious position came in sight due to various Anti-Indian measures. The government of India made sustained efforts against the policy of the Union Government and deputations were sent to South Africa. Ultimately in the beginning of 1927 a certain settlement was arrived at which is regarded generally in both countries as a good first step towards the solution. The government of India also sends an agent to the Union Government to secure continuous and effective cooperation between the two governments. A further conference met in 1932. On the whole the problem has not been completely solved but there appears a good will on both sides. It may be noted that there is also a South African Indian Congress trying to achieve a solution. However even now there is some dissatisfaction with the recent attempt at certain legislative enactments.

### *Colonies*

As regards the question of colonies in most of them there is no problem or at least no serious problem, but in

Kenya the Indians have been subjected to extremely unjust treatment and an agitation was started in India against it. The Government of India also took up the Indian cause and even expressed "deep regret" at the decision of His Majesty's Government in 1923 which was not welcomed in India and Lord Reading expressed his disappointment in strong language. In 1927 again the question came to the forefront. Later on much activity was evinced in this direction by way of deputation and appointment of a commission and the position appears to be improving.

### *Emigration*

It may be mentioned that the question of emigration has been seriously taken up by the Government of India and the Emigration Act of 1922 prohibits emigration for the purpose of unskilled labour except on certain specified terms and to certain specified countries. Formerly the misery which emigrating Indians had to suffer were really shocking.

### *Conclusion*

A close observation of the modern awakening in India in her various spheres of life would convince us that India is passing through a period of transition and is soon to emerge as a great world force. It would also appear that it will be India, most of all countries, where a harmonious blending of the East and the West will produce a peace loving civilization of a higher moral order, which will eradicate the evils of militarism and the drawbacks of nationalism and ultimately prevail over the whole world.

## *The Crown*

### *Two Divisions of India*

At the very outset it is necessary to bear in mind that from political point of view India stands divided into two main divisions British India and the Indian states. While dealing with the administration of India it would be logically necessary to discuss, however briefly it may be, the administration of the states also and though at present the states are quite separate from British India in the matter of administration, in the future federal constitution of India, as provided by the new Government of India Act of 1935, the states will no longer maintain their aloofness and the administrative machinery of India will be truly that of India and not of a part of India only. However, as the system prevails today, by the term administration of India, is generally meant the administration of British India only. Still we shall deal with the Indian states in a separate chapter and also refer to them where necessary in other chapters dealing mainly with British India.

### *The ultimate Governing Authority*

As the term itself signifies British India is a part of the British Empire and is ultimately governed by Britain. The Government of India Act (the principal Act of 1915 as amended by later Legislation, particularly the Government of India Act of 1919) lays down in section 1 that Territories for

the time being vested in His Majesty in India are governed by and in the name of His Majesty the King Emperor of India<sup>1</sup> The king of England is also known as the Emperor of India<sup>1</sup> The Government of England which is legally and nominally vested in the King is in practice exercised by the cabinet

### *The English Constitution*

At this stage it is necessary to give very briefly an outline of the prevailing system of British administration As pointed out by Dr Dicey in his 'Introduction to the Study of the Law of the Constitution', in order to understand the constitution of England we have to centre our attention firstly on the law of the constitution which consists of "rules enforced or recognised by the courts" and secondly on the conventions of the constitution which consist of "customs, practices, maxims or precepts which are not enforced or recognised by the courts" and "make up a body not of laws but of constitutional or political ethics."<sup>2</sup> Taking all these things together we can formulate the following principles as the chief features of the present system of British administration --

1. At the head of the whole administration is the King who has legally the undisputed supreme authority over the whole empire

2. Parliament is the sovereign body in the constitution "The sovereignty of Parliament" says Dicey, "is (from a legal point of view) the dominant characteristic of our

<sup>1</sup> In Virtue of the Royal Titles Act of 1876

<sup>2</sup> Introduction to the study of the Law of the Constitution p 413

political institutions"<sup>3</sup> Parliament means the King, the House of Lords and the House of Commons, though sometimes in ordinary conversation the term is intended to mean only the two Houses, the House of Commons and the House of Lords and again sometimes only the House of Commons. Parliament thus defined is sovereign and no person or body is recognised by the Law of England as having a right to override or set aside the legislation of Parliament. In practice Parliament only legislates, and its will is expressed only in the form of an Act of Parliament. The right of interpretation of an Act belongs to the courts, which greatly increases the authority of the judges. In executive matters Parliament does not interfere except in times of revolution. In judicial matters also Parliament as such does not interfere, and it sits as a court of justice last to try the case of Impeachment of Warren Hastings in 1789. However, the highest judicial tribunal in England is the House of Lords sitting as a court of law consisting as such, in virtue of a convention, only of Law Lords. It may be noted that of the three component parts of Parliament as it is legally understood the last, that is, the House of Commons is the most powerful, particularly since the passing of the Parliament Act of 1911 which very much reduced the power of the House of Lords.

3 Under the English constitution law is supreme and the rule of law forms a fundamental principle of the constitution.<sup>4</sup> It means that everybody is subject to law and not even the Government and its officers can exercise arbitrary power. They also have to come under the law. All are equally subject to the law, and while one can be

<sup>3</sup> Ibid p. 37

<sup>4</sup> Ibid p. 198

punished for a breach of the law, he cannot be punished for anything else

Law, it may be remembered, means both the direct enactments of the legislature including Charters, Bills of Rights and similar constitutional documents and the rulings of the judicial tribunals

4 The executive administration is carried on by the Cabinet which consists of a premier and several ministers and is responsible to Parliament. The Premier who is at the head of the Cabinet belongs to the party which commands the majority votes in the House of Commons and is the leader or the most influential among the leaders of that party. He appoints the other members of the Cabinet usually from among his own party. Ordinarily a Cabinet resigns when it is outvoted in the House of Commons on any vital issue, in other words when it ceases to have a majority in the House.

The subjects of administration are divided into departments such as Home, Foreign, Army etc and a minister holds the portfolio of one or more of these departments.

### *The Secretary of State for India*

One of the members of the Cabinet is in charge of the Indian administration and is known as the Secretary of State for India. He is the constitutional adviser of the Crown in all matters relating to India and is a member of Parliament and of the Privy Council. He is successor in office of the President of the Board of Control and has generally inherited all the rights and powers vested in the Board of Control, the Secret Committee, the Court of Directors and the general Court of Proprietors of the East India Company relating to the Government and revenues of India<sup>5</sup>

<sup>5</sup> Government of India Act. Sec 2(1)

*Powers of the Secretary of State*

The Secretary of State as inheriting the powers and duties of the East India Company, its Court of Proprietors and Board of Directors and of the Commissioners for the affairs of India (Board of Control) possesses very great powers. In particular, he has the power "to superintend, direct and control all acts, operations and concerns which relate to Government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges out of or on the revenues of India"<sup>6</sup>

For the sake of convenience we may classify the powers and duties of the Secretary of State under four general heads —

1 His powers and duties as a member of the Cabinet and as the constitutional adviser of the Crown in all matters relating to India. In this capacity he advises His Majesty regarding the appointment of certain officers of the Government. Appointments reserved to the Crown, except that of the Governor General,<sup>7</sup> that is, those of the Commander in Chief, the Governors of provinces and members of the Executive Council are made by the Crown acting on the advice of the Secretary of State.

The Secretary of State is responsible to Parliament for the general administration of the country and has to answer questions relating to India asked by a member in any of the Houses of Parliament. Since the passing of the Government of India Act of 1919 the salary of the Secretary of State is paid from the British Exchequer, i.e., out of the money voted by Parliament. Therefore Parliament is now in closer

<sup>6</sup> In § Sec. 2(2)

<sup>7</sup> The Governor General is appointed by the Crown acting on the advice of the Premier.

touch with the affairs of India and the Secretary of State than it formerly was and the Secretary of State has to be more alert to defend the policy and conduct of administration in India and has to be more conscious of his responsibility to Parliament, as any member can now make a motion of reduction of his salary thereby requiring him to explain or defend any particular act of administration. For the sake of facility it is usual to have among the Secretary of State and his Under Secretaries members of both the Houses of Parliament. The Secretary of State in Council has to lay before both Houses of Parliament every year an account of the annual revenues of India and all receipts and disbursements and of debts, liabilities etc etc.

2 His powers and duties with respect to the business of the Government of India transacted in the United Kingdom. The Act of 1919 has very much relieved the Secretary of State of his work relating to purchases etc of the Government of India which is now done by the High Commissioner for India.

3 His powers and duties with respect to property etc vested in His Majesty for the purposes of the Government of India. As provided by Section 21 of the Government of India Act, the Secretary of State in Council controls the expenditure of revenues of India both in British India and elsewhere. But he cannot apply the revenues of India to meet the expenses of military operations beyond the frontier (except under certain circumstances) without the consent of both Houses of Parliament. He is also authorised by the Act to sell and dispose of any property vested in His Majesty by way of mortgage or otherwise and make the proper assurances for any of those purposes and purchase and acquire any property. But for these purposes the

concurrence of a majority of votes at a meeting of his Council is necessary

The Act also provides that the Secretary of State in Council may sue and be sued as a body corporate in a court of law. But neither the Secretary of State nor any member of his council may personally be liable for any liability incurred in their official capacity.

4 His powers over the Central and Provincial Governments in India. As previously noted the Secretary of State has a general power of control and superintendence over the Government of India. Previous to the passing of the Government of India Act, 1919, the Secretary of State had very considerable powers over the Government in India both central and provincial and unqualified power to give orders to the Governor General and any other officer and the Government in India was required to pay due obedience to all such orders. Apart from this the Indian legislature whether central or provincial could not pass an Act without his previous approval.

In executive matters also his sanction was necessary not only for changes in policy or increase in expenditure but sometimes in details of administration also, while no change could be introduced in taxation without his previous sanction. But now his control has been very much relaxed and the Governments in India have been allowed a freer hand. The general principle with regard to this relaxation of control is, with respect to the central administration, that the Secretary of State does not intervene, except under special circumstances, in matters of purely Indian interests when the Government of India and the Legislature are of one view. With respect to Provincial administration so far as the reserved subjects are concerned the Secretary of State

or the Government of India should not ordinarily intervene when the Government and the Legislature are one in view, and so far as the transferred subjects are concerned this control should be confined within the narrowest possible limits

The Secretary of State has also the power to make appointments to the Imperial Services<sup>8</sup> He also makes regulations about the qualifications of candidates for the Indian Civil Service Examination

### *Relaxation of Control*

As regards the principles of relaxation of control by Secretary of State over the Indian administration two points are noteworthy Firstly there are rules restricting the exercise of powers made under a definite provision of the Act Secondly there are the conventions which govern the relations between the Secretary of State and the Government of India About the first, the Act lays down that the Secretary of State in Council may "by rule regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council by this Act or otherwise in such manner as may appear necessary or expedient in order to give effect to purposes of the Government of India Act, 1919"<sup>9</sup> These rules when they relate to subjects other than the transferred subjects have to be laid in draft before both

<sup>8</sup> The Government service in India has three grades —

- (a) the Imperial service for example Indian Civil Service Indian Educational Service Indian Police Service Indian Medical Service etc
- (b) the Provincial Service and
- (c) the subordinate service

Admission to the last two is in accordance with rules and regulations made by the Provincial Government

<sup>9</sup> Sec 19A of the Act

Houses of Parliament and be approved by them, while rules relating to transferred subjects have to be laid before both Houses of Parliament after they are made and it is open to either House to present an address to His Majesty within thirty days praying that the rules or any of them may be annulled.

As regards the conventions Parliament has ordained that in practice they should be modified. As a matter of fact much depends upon the two personalities, the Secretary of State and the Viceroy and in the words of the Montagu Chelmsford Report "the relations between Simla and Whitehall vary with personal equation." While a sympathetic Secretary of State may interfere very little with the conduct of administration in India, a less sympathetic incumbent of the office may find more frequent occasions of such interference. At the same time much may also depend upon the interest which Parliament may take in Indian affairs at a particular time. For example, when Parliament takes little interest in matters relating to India, the Secretary of State may find it more convenient to let them alone.

#### *Powers in relation to his Council*

So far we have been speaking of the Secretary of State and his powers, but it must be remembered that he has a council which in certain matters must be consulted and whose decision in certain matters must be accepted. From this point of view we may classify the powers of the Secretary of State under three heads —

1. Powers which he can exercise or duties which he can perform on his own responsibility and without consulting his council. For example he may reappoint a member of his council for special reasons of public advantage, or,

for the sake of convenience, may constitute committees of the council, or may revoke or suspend the appointment of a council for any or all of the Governor's Provinces

2 Powers and duties for whose exercise and performance consultation with his council is necessary This division includes the next division and also includes making of rules for the relaxation of Indian administration, suspension of certain powers of Governor General determination of number of Governor's Executive Council etc or prescribing the procedure for sending of orders and communications to India

3 Powers and duties which can be exercised or performed only when there is concurrence of a majority of votes at a meeting of the council For example, no grant or appropriation of any part of the revenues can be made without such concurrence Such concurrence is also necessary for the disposal of any property by mortgage or otherwise and also for making contracts for the purposes of the Government of India Act This third division is in fact included in the second

#### *Under Secretaries of State for India*

The Secretary of State appoints for his assistance two Under Secretaries One of these is a Government Official, a member of the Civil Service, and is permanent, while the other is a member of Parliament and changes with the Government As a matter of practice, though not necessarily, this latter is a member of that House of Parliament of which the Secretary of State is not a member This system keeps both the Houses of Parliament in direct touch with the Indian affairs

#### *The Council of India*

As has been said above there is a council for the Secretary of State which is known as the Council of India or the India

**Council** The Secretary of State is himself the president of the council and he has the power to vote. The vice president of the council is appointed from among the members by the Secretary of State in Council and can be removed by the Secretary of State at any time. The number of members of this council is determined by the Secretary of State but the Act prescribes the minimum of eight and the maximum of twelve in place of ten and fourteen respectively as hitherto<sup>10</sup>. The tenure of office of the members of council is five years in place of seven as was the case previously, except when a member is reappointed, which is only allowed for special reasons of public advantage. Each member is paid an annual salary of twelve hundred pounds with a further annual subsistence allowance of £ 600 if he was at the time of appointment domiciled in India. No member can vote or have a seat in Parliament. The members of the council are appointed by the Secretary of State. But a member can only be removed from his office by His Majesty on an address of both Houses of Parliament. As a qualification of members it is necessary that one half of them must be persons who have served or resided in India for at least ten years and have not last left India more than five years before the date of appointment.

#### *Powers and Duties of the Council*

The Council of India must meet at least once every month, usually it meets once every week (which was required by the earlier Act). Meetings of the council are held in accordance with the direction of the Secretary of State.

The council acts in two capacities. For certain matters

<sup>10</sup> At present there are eight members of the Council of whom three are Indians.

it is only an advisory body, i.e., the Secretary of State must consult his council in those matters but he is not bound by its decision. In case of difference of opinion any member present at the meeting may require that his opinion and any reasons for it which he has stated in the meeting be entered in the minutes of the proceedings. In such cases, that is, when there is difference of opinion on any question the determination of the Secretary of State is final. Again there are certain matters in which there is a statutory provision that the concurrence of the majority of votes is necessary. These are, for example, the appropriation of revenues or disposal of property etc.

Generally speaking the Act provides that the Council of India is to "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India". But it has to work under the direction of the Secretary of State. The Secretary of State in Council<sup>11</sup> prescribes the procedure for sending of orders and communications to India and for correspondence between the Secretary of State on the one hand and the Governor General in Council or a local Government on the other. It may also be noted that when the Secretary of State is not present at a meeting of the Council his approval in writing is required for all acts done at the meeting.

It is quite clear that the Council of India has very limited powers and only in a few matters is its decision binding on the Secretary of State. He has very great power over his council and the Act of 1919 has increased his powers. It is after all mainly an advisory body. However, its importance is increased in view of the noteworthy fact that a

<sup>11</sup> Powers which are exercised by the Secretary of State in Council have to be exercised at meetings of the Council.

large number of the members are persons who have spent considerable time in India and have acquired vast experience of Indian affairs, while the Secretary of State is usually without any practical experience of Indian affairs and derives his knowledge of India at a second hand

### *The India Office*

India Office is the name given to the Secretariate which is associated with the Council of India and the Secretary of State. Buildings of this office are situated in London at Whitehall. The functions of the India Office were, previous to the passing of the Act of 1919 twofold. They were firstly of the nature of administrative control and superintendence and secondly of the nature of agency. In the latter capacity the India Office transacted business for the Government of India in such matters as the purchase of stores and stationery etc., payment of pensions to retired servants or giving assistance to Indian students resident in England or furnishing certain information etc. But according to that Act this latter class of functions has been taken over from the India Office and handed over to the High Commissioner for India and his Office. Appointments in the India office are made by the Secretary of State in Council and are subject to the rules of the ordinary civil service of England.

### *The High Commissioner for India*

Section 29A of the Act says that His Majesty may by order in Council make provision for appointment of a High Commissioner for India in the United Kingdom and the order may further provide for delegating to the High Commissioner any of the powers previously exercised

by the Secretary of State or the Secretary of State in Council in relation to making contracts and may prescribe the conditions under which he shall act on behalf of the Governor General in Council or any local Government" Such a High Commissioner for India was appointed and he has taken over various functions of the India Office in connection with agency. He has now the direct control of various departments particularly those concerned with the purchase and supply of stores etc for the Government of India, payment of pensions and leave allowances and assistance of Indian students during their residence in the United Kingdom. He also supervises the work of the Indian Trade Commissioner and his functions further include the supervision of the probationers to the Indian Civil and Forest Services after their first appointment and also the sale of publications etc of the Government of India. The High Commissioner and his staff excluding that of the stores department have their office at India House, Aldwych.

The creation of this office of the High Commissioner for India is very important from the point of view of political status. India has not yet attained the status of the self governing dominions of the British Empire but it has now become the declared policy of Parliament "to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self governing institutions with a view to the progressive realisation of responsible Government in British India as an internal part of the Empire"<sup>12</sup> Having in view the spirit of this declaration the appointment of a High Commis-

<sup>12</sup> Preamble to the Government of India Act 1919 which has not been repealed by the new Act of 1935

sioner is a step towards raising the status of India which is thus brought in line with the self-governing dominions. The dominions have got their High Commissioners in London, but there is still a great difference between India and the dominions.

### *Establishment Charges*

The total cost of the India Office establishment is now about £ 230,000 annually. Formerly the whole cost of the India Office was charged to the Indian revenues except a small portion for which the Government of England made certain grants and remissions but now the Act has made important changes in this respect. The idea is that the Secretary of State being like other Secretaries of State in charge of a department of general administration of the Empire and also being a member of the Cabinet the charges of his establishment ought to be borne by the English revenues. As an officer of the English Government he only superintends and controls the administration in India and is not an administering authority in India, therefore he should be paid from the British exchequer. Now that a High Commissioner for India has been appointed, who will have charge of all agency functions performed by the Secretary of State or the Secretary of State in Council for the Government of India, the Secretary of State will be left in charge of purely administrative functions. When this separation is complete the Secretary of State and his office will be maintained by the British exchequer, while the High Commissioner and his office will be maintained by Indian revenues. Until that time however arrangements are made for an equitable apportionment of the total cost of the India Office to British and Indian revenues. The Act has

provided that the salary of the Secretary of State must be paid out of moneys provided by Parliament while the salaries of the Under-Secretaries and of the members of the Council and other expenses of his department may be paid out of the revenues of India or out of the money voted by Parliament. At present about £115,000 is contributed by British treasury towards the maintenance of India Office. The salaries of the Secretary of State and the Parliamentary Under Secretary together with a contribution for general expenses are paid out of moneys voted by Parliament.

### *The Legislative Authority*

As we have seen above Parliament is the supreme authority in the Empire. It is mainly a legislative body. It can legislate for the whole Empire and consequently for India also. As a matter of practice it does not interfere with the legislative power of the Government in India. As regards Indian affairs it concerns itself with them only in so far as the constitutional aspect is in question, i.e., it passes legislation concerning the determination of the Indian constitution, for example, it passes the Government of India Act or the Indian Councils Act or the Indian High Courts Act etc.

In this connection it may be noted that the Acts of Parliament are not generally applicable to India unless they are expressly made so. But there is another way in which the Crown exercises legislative power over Indian matters. As we shall see later in the chapters on central and provincial administration with reference to the legislature, His Majesty in Council may signify his disallowance of an Act

of the Indian Legislature or of a local Legislature<sup>13</sup> In certain cases of Imperial as well as Provincial Acts, they are not valid until His Majesty in Council has signified his assent to them<sup>14</sup>

### *Judicial Authority*

In judicial matters also, as in others, the Crown is the supreme authority over the whole Empire With reference to India this authority is exercised in a very few particular cases Appeals in civil cases of higher valuation (usually above Rs 10,000) from decisions of the Indian High Courts are made to His Majesty in Council and heard by the Judicial Committee of the Privy Council whose decisions are binding on all the High Courts in India In special circumstances other appeals also and sometimes but very seldom even criminal appeals can, by permission, be filed and heard

Then again His Majesty has the prerogatives of pardon and mercy etc which are usually exercised on his behalf by the Viceroy

### THE NEW GOVERNMENT OF INDIA ACT OF 1935

*We may note the important changes to be introduced by the new Government of India Act of 1935, with respect to the Secretary of State, his Council and the High Commissioner The following provisions of the new Act may be remembered*

- 1 The Council of India shall be dissolved [Sec 178 sub-section (8)] But there shall be a body of persons numbering not less than

<sup>13</sup> The Governor General is required to submit an authentic copy of the Acts to which he has given his assent to the Secretary of State whether the Acts were passed by a Central or a Local Legislature This copy is laid before each House of Parliament

<sup>14</sup> Such a case arises when the Governor General instead of giving or refusing his assent to an Act of the Central or Local Legislature reserves it for the signification of His Majesty a pleasure thereon.

three nor more than six to advise the Secretary of State on any matter relating to India on which he may desire their advice. In certain matters, for example, recruitment to services the Secretary of State can exercise his power only with the concurrence of his advisers. The adviser will be appointed by the Secretary of State. Each adviser will receive a salary of £1350 a year. The qualification and tenure of office etc. of these advisers will not be very different from those of the members of the present India Council.

2. The powers of the Secretary of State have been curtailed in many respects. For instance, (a) The control or superintendence exercised by the Secretary of State over the Governor General is now limited to matters in which the latter is required to act in his discretion or to exercise his individual judgment [Sec 14 sub sec (1)] and even here in issuing directions the Secretary of State shall satisfy himself that nothing in the directions requires the Governor General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty [Sec 14 sub sec (2)]. (b) The powers of borrowing on the security of the revenues of India vested in the Secretary of State in Council shall cease [Sec 161]. (c) Suits etc. will now be brought by or against the particular Government concerned i.e., the Federation of India or a Provincial Government as the case may be etc. etc.

3. The High Commissioner shall be appointed and the salary and conditions of his service shall be prescribed by the Governor General exercising his individual judgment. Apart from the functions of the Federation he may also, with the approval of the Governor General, perform similar functions on behalf of a Province or a Federated State or Burma.

#### ORDER IN COUNCIL.

The new Act has provided that any powers conferred by the Act on His Majesty in Council shall be exercised only by Order in Council.

## *Central Administration*

### *Nature of Indian Government*

The Government of India as at present constituted is a unitary Government and not a Federal one, though in the near future, as provided by the Act of 1935, it is going to become a Federal Government embracing in its fold not only the various parts of British India but also the Indian States. The unitary form of government is distinguishable from the federal form mainly in the division of powers. In a Federal Government the strength of the State is usually split up among independent and co-ordinate authorities, while unitarianism implies "the concentration of the strength of the State in the hands of a visible sovereign power"<sup>1</sup> The form of Indian Government is unitary, vesting the supreme governmental authority in a visible sovereign body which is ultimately the British Parliament (as representing the sovereign power of the whole British Empire), and in India itself, in the words of Sir T W Holderness, the Government of India has supreme and undivided authority subject of course to the Government in England. Still we must bear in mind that sovereignty "resides in no one element. It is essentially the relation in which each factor of the constitution stands to the whole"<sup>2</sup> As we have noted above

<sup>1</sup> Dicey's Law of the Constitution, Page 153

<sup>2</sup> Bosanquet's Philosophical Theory of the State Page 261

(page 29 note) Indian conception of sovereignty has been mainly pluralistic. Today also it finds expression in two different ways, for though Parliament is legally sovereign and the Government of India has supreme and undivided authority yet this sovereignty or this authority is not exercised either against the wishes of the whole people or in a manner which may interfere with the religious freedom of the people. The second type of expression is, coming in line with Bosanquet's theory, the relation existing between the various elements of the constitution. To be more clear, it is admitted that the Government of India has supreme and undivided authority, at the same time we cannot ignore the fact that the Viceroy and his Council may have to restrict the exercise of their supreme authority in view of a resolution of the Indian Legislature or again the fact that they may not exercise their power to override a decision of a Local Government, so that though legally speaking we have got a sovereign power in England and a power in India sovereign except for subjection to the sovereign power in England, in practice this sovereignty has many restrictions and the Indian people are trying to get more and more restrictions placed on the exercise of this sovereignty.

### *Aim of Government*

Like every authority which exercises control over individuals or group of individuals, government must justify its existence. Certainly when it places restrictions over the actions and movements of the people and sends certain persons to jail, it must have some important aims and some great good of the people in view.

It is not quite easy to define the aim of Government, which has been varying in different ages in different countries.

While one extreme view considers that the aim of government is merely to maintain order among its subjects and defend them from foreign aggressions, the other extreme view will place no limits on the activities of government and will require it not only to maintain peace and order and provide for defence but also to secure moral and material welfare of the people and guide them in all the spheres of life, political, economic and religious etc. In between these extremes there are a number of intermediate stages. On the whole we can accept Bosanquet's statement that the end of the state is "the best life".<sup>2</sup>

The Indian conception of the aims of government also appears to have varied from time to time. But on the whole it has tended towards a wide scope of activity. Apart from protection and maintenance of peace and order it has insisted upon securing prosperity to the people and *protecting and promoting righteous life*. The *Rigveda*, the earliest existing authority on India, regards the King as the guardian of the people. Gautama a sutra writer requires the government, apart from performing other duties, to help the poor and support the needy. Manu, the great law giver, goes a step further and says that the king should behave like a father towards his subjects and should please them. Kautilya in his famous *Arthashastra* requires the government to look after the religious and moral life of its subjects also and support the poor and the aged etc. We know from authentic history that the government during the reign of Aśoka was paternal and looked after the welfare of its people in almost all the aspects of life, organising even missionary work and trying to promote religious and righteous life. But we must bear in mind that, while recognising few or

<sup>2</sup> *Philosophical Theory of the State*, p. 172

no restrictions on state activities, the Indian theory always required the government to conform to Dharma or Rita (law including local or family custom) which was regarded above all and claiming obedience even from the king

In the mediæval ages the Muslim rulers confined the activities of the state within very narrow limits. Only occasionally, as during the reign of Akbar, the state aimed at social welfare and reform, e.g. it tried to abolish the *sati* system. However in the best days of the Mughal rule the government appears to have been paternal.

Under the British rule the aim of government has been primarily to protect the country from internal disorder and foreign aggression and to promote the material welfare of the people. For some time past the idea has been gaining ground that the government should be responsible to the people. This responsibility in practice would mean the conformity of the actions of the executive to the wishes of the elected representatives of the people expressed through a majority vote in the popular legislature. Parliament has accepted this view and the present Government of India Act has been framed to secure this in a progressive measure, so that it is now the declared policy of Parliament and the aim of Government to give the Indian people an increasing voice in the administration of their country.

### *Functions of Government*

The functions of government would obviously vary with its aim. In this connection we may note that two contradictory theories have been propounded, one requiring the state to confine its activities within the narrowest limits possible leaving the people free to conduct their social, economic and religious life according to their own *vis à vis*, and the other

giving the state as much scope as possible guiding the whole life of its people. Gradually however the latter view is gaining ground and the State is every day widening the scope of its activity.

The fundamental functions<sup>1</sup> of the State are to provide for the defence of the country, maintenance of peace and order and dispensing of justice. Apart from this the state undertakes to secure a healthy atmosphere for progress, to impart education, both general and technical, to facilitate commerce and industry, to improve agriculture by providing means of irrigation and by other methods, to provide for famine relief etc etc. The State also owns many railways and owns and manages the Post and Telegraph system. In India particularly its activities are still more expanded. It has the monopoly of note issue and is the only authority to set the mint in motion. It also acts as guardian of minors and disqualified persons and protects the agriculturists from bringing ruin upon themselves by alienating their lands or by borrowing on high rates of interest. It lends money to local bodies and also to agriculturists for agricultural and certain other purposes. It has further the monopoly of opium and salt production and also undertakes to provide for medical relief, sanitation preservation of ancient relics, construction of public works etc etc. At the same time it concerns itself with the Indian States also. As a matter of fact the functions of the present Government in India are perhaps more extensive than those of any other important government in the world. The Government in India,

<sup>1</sup> Bosanquet in his *Philosophical Theory of the State* has summed up the definition and limitation of state action as such in the simple phrase, "State action is coincident with the maintenance of right" (p. 181) and rights are claims recognised by the State i.e. by Society acting as ultimate authority to the maintenance of conditions favourable to the best life" (Faber 187).

however, does not interfere with the religious beliefs and practices<sup>5</sup> of her people, but often legislates for their social welfare and though such matters as marriage or inheritance are regarded as belonging to the special domain of religion, the State has intervened by legislation to effect salutary changes, for example, to prevent child marriage or declare certain persons as heirs who were not so before either by virtue of customary practice or according to scriptural texts

### *Strength of Government*

Government is the most powerful organisation of society and the power behind it is for all practical purposes physical force i.e. its police and military strength. Bosanquet says that the means at the disposal of the state as state to achieve its end "always partake of the nature of force, though this does not exclude their having other aspects as well"<sup>6</sup>. Though the apparent strength of the government is its physical force without which it would become impossible for it to function, it cannot base its existence on that force. It must ultimately depend upon popular acceptance of its authority. There was a time when a foreign conqueror could, with the help of a foreign force, keep a people under subjection, but even then that subjection could not last for long. Times have changed and today it is not possible to maintain such a state even for a short length of time. Modern ideas of democracy and the peculiarly modern phenomenon of economic interdependence of countries and nations have brought about such a state of

<sup>5</sup> The Government is as a rule aloof from religious matters. But it acknowledges its responsibility for providing for the spiritual needs of the soldiers and the civilians whom it brings out to this country. And for this purpose it maintains an ecclesiastical establishment.

<sup>6</sup> Philosophical Theory of the State. Page 172

affairs that one country would not be ruled against its wishes and territorial acquisitions by conquest have become almost out of date. Even a national government has to yield to the wishes of the people expressed through a majority vote in the highest representative body in the State. So that popular support, which has always been a necessary condition of success for a Government in the long run, is today an undoubted necessity for almost every important measure it wishes to take.

### *Division of Functions*

There are two kinds of division of the functions of government, one between the different parts of the government i.e. the legislature, the executive, and the judiciary, and the other between the Central and Provincial governments. As to the former a federal state divides the functions more or less coordinately among the parts. In political science this division is known as separation of powers and Montesquieu, the French political philosopher, has been the greatest advocate of this theory. In unitary states, however, the power of the state is now vested in three coordinate bodies but in one visible sovereign body. In England it is Parliament, which is essentially a legislative body. Modern political ideas require the government to conform to the wishes of the people and therefore the power of the representatives of the people is great. In India, however, owing to its peculiar historical circumstances the power of the Governor General in Council has been far greater than that of the representatives of the people. Formerly this body, the Governor General in Council, was not only the Executive but with the addition of certain members constituted the Legislature also. Now, however, we have got an *Indian Legislature* containing a

majority of elected members, but still the executive is not responsible to it and the Governor-General can override its decision. Even now the Executive has got some legislative power and the Governor General can pass Acts on his own authority and can issue ordinances which can have force of law for a period of six months. In the matter of judiciary also the Indian constitution is peculiar. For there is no supreme court in India which could claim anything like coordination with the central executive or the central legislature.<sup>7</sup> Here justice is only a provincial subject and is administered accordingly, there being High Courts or Chief Courts in charge of judicial administration of their respective provinces.

The second division of functions i.e. between the Government of India and the Provincial Governments is also particularly noteworthy. The principle in a federal state is that the several states federated agree to surrender certain of their powers (such as defence of the country etc.) to the federal or the central government and all other powers vest in the several states themselves. The principle in unitary states, on the other hand, is that all the powers belong to the central government which delegates certain of them to the local governments, they being regarded as a kind of agents deriving their authority from the government at the head. The present constitution can be described as lying between these two. Originally it belonged purely to the latter class and the local governments exercised their authority in virtue of delegation to them of certain powers by the

<sup>7</sup> Such is neither the case in federal states for example in the United States of America where we find a Supreme Court almost co-ordinate with the Executive and the Legislature nor even in unitary states like England where the High Court exercises jurisdiction over the whole country.

central government. Gradually the idea of decentralisation gained ground and provinces were given more powers. Ultimately the Act of 1919 gave the Indian constitution a federal tinge. Instead of giving particular powers to the local governments it has done the reverse by specifying the subjects reserved to the Government of India. This implies that the rest of the powers lie in the provincial governments.

### Central Subjects

The subjects reserved to the Government of India or the central subjects include the following —

- 1 Defence of the country and all matters connected with His Majesty's military and air forces in India including His Majesty's Indian Marine service.
- 2 External or foreign relations including relations with the foreign powers. Also immigration, migration and pilgrimages to the India.
- 3 Railways (with some exceptions) Posts, Telegraphs and Telephone.
- 4 Customs, excise, cotton and excise duties and other sources of all India revenue. All political charges.
- 5 Currency and coinage.
- 6 Public debt of India.
- 7 Civil and criminal law.
- 8 Commerce, banking, trading companies, etc.
- 9 Control of opium, manufacture of alcohol and explosives etc.
- 10 Control of arms and ammunition and central police organisation.
- 11 Ecclesiastical administration.
- 12 Survey of India, Census and Statistics, Archaeology and Meteorology, etc.
- 13 Aircraft, major ports, light houses, shipping and

navigation

14 To certain extent inland waterways, development of industries, control of mineral development and legislation in regard to provincial subjects

## THE CENTRAL EXECUTIVE

### *Constitution*

The executive authority of the Government of India is vested in the Governor General in Council<sup>1</sup>. The Governor General is the sole representative of the Crown in India and is called the Viceroy<sup>2</sup>. For administrative purposes he has got a council which is known as the Viceroy's Executive Council. The Viceroy himself and the members of his Executive Council are appointed by His Majesty by warrant under the Royal Sign Manual, the Viceroy is appointed on the advice of the Prime Minister and members of the Council are appointed on the advice of the Secretary of State. The tenure of office of the Governor General and the members of his council is not fixed by an Act of Parliament but as a rule of convention they retain office for five years.

### *The Viceroy and his Council*

The Council of the Viceroy is an important body and

<sup>1</sup> The superintendence, direction and control of the civil and military Government in India is vested in the Governor General in Council who is required to pay due obedience to all such orders as he may receive from the Secretary of State [Section 33 of the Act]. When the Crown took over the administration of India the Governor-General was made a Viceroy and he is usually known as such but the early title of the Governor General is still used in the Parliamentary documents.

<sup>2</sup> While in office the Viceroy is the Grand Master and the first and principal knight of the Order of Star of India (G M S I) and also of the Most Eminent Order of the Indian Empire (G M I E), His Majesty being the sovereign of the two Orders.

no important action can be taken by the Government without the consent of majority of the members. This Council is not like the Council of the Secretary of State mainly an advisory body. It is in law<sup>10</sup> as well as in fact a part of the governing body at the head of the Indian administration, and the Governor General is bound by the opinion and decision of majority of members of the Council present at the meeting, except under very special circumstances. But he has the power to overrule his Council and take any action on his own authority and responsibility when he considers that "the safety, tranquillity or interests of British India or of any part thereof are or may be essentially affected." This is a power which is very rarely used but it is certainly very important, for its absence may create serious trouble and hinder smooth administration of the country, as it did during the days of the first Governor General, Warren Hastings.

### *Personnel of the Council*

The number of the members of the Council has been varying. The Regulating Act of 1773 had fixed it at 4, then the Pitt's India Act of 1784 reduced it to three, including the Commander in Chief. Then the number began to increase. The Charter Act of 1833 added a Law Member to the Council. The Councils' Act of 1861 by adding another member raised the number to 5. The Morley Minto Reforms introduced one Indian member. Before the passing of the Act of 1919, there was a provision in the principal Act of 1913 that the number of members would be '5, or if His Majesty thinks

<sup>10</sup> Compare the language with reference to the Secretary of State. While in one case the powers are given to the Secretary of State (Sec 2 of the Act), in the other case they are given to the Governor-General in Council.

fit to appoint a sixth member.<sup>6</sup> In 1919 there were 6 members with the addition of the Commander in Chief as an extraordinary member who was the seventh. But the Act of 1919 removed the statutory bar to the number of members and provided that it shall be such as His Majesty thinks fit to appoint. In order to secure further Indianisation it was provided that at least three members must be Indians.

Among the qualifications of members it is laid down that at least three of the members must be such as have served the Government in India for at least ten years and one must have certain legal qualifications. At present there are seven members of the council excluding the Viceroy but including the Commander in Chief<sup>11</sup> who is also a member. Of these there are three Indians, one holds the portfolio of Law, the second of Education, Health and Lands and the third of Railways and Commerce. The Governors of the three presidencies become extraordinary members of the Council when it meets in their respective provinces.

### *Meetings and Procedure of the Council*

The Governor General is the president of the Council and he has the power to appoint any of the members as vice president. The Governor General in Council appoints the place where the Executive Council will meet. But usually it meets in Delhi the seat or in Simla the summer resort of the Government of India. The Council meets ordinarily once or twice every week.

The transaction of business in the Council has now been

<sup>11</sup> The Commander in Chief for the time being of His Majesty's forces in India may also be an ordinary member of the Council holding the portfolio of army department. Usually always he is such a member. In such case he has rank and precedence in the Council next after the Governor-General.

facilitated by the rule that the Council usually considers only important questions and leaves the ordinary and routine matters to be disposed of by the members of the Council concerned. When the Viceroy thinks that any particular matter should be considered by the Council or when he disagrees with a member on a question relating to his department, he puts the matter before the Council.

For the sake of facility the subjects of administration have been grouped into several departments, viz (I) Foreign and Political (II) Home (III) Finance (IV) Commerce including Railways (V) Industries and Labour (VI) Law (VII) Education, Health and Lands (VIII) Army. Each of these departments is administered by a member of the Council, the first, that is, the Foreign and Political department being in charge of the Governor General himself. At meetings of the Council the president and any one member not being the Commander in Chief form the quorum and may exercise all the functions of the Governor General in Council. Ordinarily the majority view prevails at a meeting except in circumstances when the Governor General considers that the safety, tranquillity or interest of British India is affected, in which case he can adopt, suspend or reject any measure proposed either wholly or in part. But in such a case any two members of the dissentient majority may require the matter to be reported to the Secretary of State. The person presiding at a meeting of the Council has also got an ordinary vote and in case of equal division a second or casting vote. There is a secretary for each department who attends the Council when matters under his cognizance are discussed but does not speak. He is in charge of the departmental office and discusses important matters of his department with the Viceroy and can bring to

his special notice any matter which he considers necessary. He usually holds office for three years

*Powers of the Governor-General or the Governor-General in Council*

The powers of the Governor General or those of the Governor General in Council can be best understood when we consider them in relation to various classes of the subjects of administration. First and foremost of all, the Governor General in Council administers directly what are known as central subjects i.e. the subjects reserved to the Government of India by rules made under the Act of 1919. Secondly, he supervises and generally controls the administration of provincial subjects by the Local Governments. Thirdly, apart from his executive authority, the Governor-General in Council has important powers in matters of legislation. Fourthly, as a representative of the Crown he exercises certain prerogatives and lastly he has certain powers with respect to the Indian States.

*As regards Central Subjects*

As to the first the Governor General in Council has in general the power of "superintendence, direction and control of the civil and military Government of India" and exercises all powers connected therewith. The restrictions on his exercise of power are very few, but they are important as far as they go. He is required to pay due obedience to all such orders as he may receive from the Secretary of State. He is generally responsible to parliament<sup>12</sup> and not to

<sup>12</sup>Parliament has always asserted its supreme right over the administration of India. Even the Act of 1919 whose main object has been to transfer control to the Indian people as far as expedient in the preamble clearly says that time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian people.

the Indian Legislature. But Parliament or in practice the Secretary of State does not interfere in the matters of purely Indian interests except very rarely and in very special circumstances. Since the passing of the Act of 1919 this interference has been still more relaxed, particularly when the Government of India and the Legislature are in agreement. At the same time the Governor General in Council has to pay due attention to the resolution of the Legislature and though he has the power of veto the exercise of this power is very frequent. The Governor General in Council can restore any demand refused by the Legislative Assembly if he regards it essential to the discharge of his responsibilities. The Governor General has also the power to authorise in cases of emergency any expenditure which he considers necessary for the safety or tranquillity of British India or any part thereof. A very important restriction on the Governor General's power is to be found with respect to his powers of making wars and treaties. The Act lays down that except in case of hostilities having actually commenced or preparation actually made against the British Government in India or against any dependent or guaranteed state, in no other case can the Governor General in Council "either declare war or commence hostility or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possession of any such prince or state. When he commences any hostilities or makes any treaty he must forthwith communicate the same, with reasons therefor, to the Secretary of State.

#### *As regards Provincial subjects*

As regards the power of the Governor General in Council over the provincial subjects the Act provides that he is entitled to the obedience of every local government,

which is "under his superintendence, direction and control in all matters relating to the government of its province" Formerly the Governor General in Council exercised a greater control over the provincial administration than he does now As a rule as regards the reserved subjects<sup>13</sup> the Government of India does not interfere in matters in which the Local Government and the local legislature are in agreement, and as regards the transferred subjects the control of the Government of India is restricted within the narrowest possible limits In the matter of legislation the Governor-General has the power to assent to or withhold his assent from any Bill passed by a local legislative council and as sent<sup>d</sup> to by the Governor, the Lieutenant Governor<sup>14</sup> or the Chief Commissioner as the case may be and the Governor General's assent is necessary for the validity of any Act Again certain Bills must be reserved for the consideration of the Governor General

Apart from these powers as regards administration the Governor General in Council has got certain very important powers with respect to provinces He can "by notification declare, appoint or alter the boundaries" of any province But the Secretary of State in Council may disallow such a notification Again with the approval of the Secretary of State he can "take any part of British India under the immediate authority and management of the Governor General in Council" He can also with the approval of the Secretary of State in Council create an Executive Council in any province administered by a Lieutenant Governor<sup>15</sup>

<sup>13</sup> The classification of the provincial subjects into reserved and transferred will be explained in the Chapter on Provincial Administration

<sup>14</sup> Now there is no province under a Lieutenant Governor

### *As regards legislation*

As regards powers of legislation the Governor General himself or the Governor General in Council exercises considerable authority. These powers will be described in detail later on in connection with the Legislature.

### *Prerogatives*

It may be noted that the exercise of prerogatives is becoming less and less frequent with the advance of time. In any case its exercise now can hardly be called discretionary and has become subject either to rules of law or to rules of convention. In India the supreme head of the administration is the Governor General who is the direct and sole representative of the Crown, the highest ruling authority of the empire. As such he is vested with the right of exercising the power of prerogatives.

In particular he exercises the prerogatives of mercy and pardon, that is, he can exempt any offender or class of offenders from trial in a court of law or can remit or reduce any sentence passed upon any offender or offenders by a court of law.

### *As regards the States*

Lastly with regard to the states the Government of India is the suzerain or paramount power. It is not possible to give any general account of the relations between the Government of India and the Indian states, because the connection with various states arose in different ways and the treaties entered into with them imposed different obligations in case of different states. But from the point of view of the powers exercised by the Governor General two or three important points may be noted. In the first place, all

matters relating to the states are under the special supervision of the supreme government and the Governor-General personally looks after them. The subject of the relation with the states is a central subject and is administered by the Foreign and Political Department of the Government of India whose portfolio is held by the Governor General himself. The states are not allowed to deal directly with the Crown. In the second place, the Government of India interferes very rarely with the internal affairs of the states. In this connection it may be remembered that different states enjoy different rights and privileges varying from a mere shadow of authority to a little less than sovereignty in respect of internal administration. Thirdly, the Government of India controls all the foreign relations of the states including relations among themselves and all disputes arising between the states must be referred to the suzerain power. Lastly, there is the connection with the Chamber of Princes. This Chamber selects its own officers, the chief of them being the Chancellor, but the Viceroy is its president. The officers through whom the Government of India or the Political Department exercises its power are known as political officers, the most important among them being the Resident in larger states and Agent to the Governor General in the agencies or groups of states. They represent the suzerain power in their respective states or groups of states. Their power and influence vary in different states. They are expected to render advice and assistance in administrative matters or any matters when consulted.

#### *The Governor General and the Governor General in Council*

As we have seen above the Executive Council of the Governor General is a very important administrative body

and ordinarily the governing powers are vested not in the Governor General alone but in the Governor General in Council. Still however apart from having the power to overrule his Council in exceptional cases the Governor General enjoys certain rights belonging to himself alone. An important power of this kind is derived from the provision of the Act that whenever the Governor General in Council declares that it is expedient that the Governor General should visit any part of India unaccompanied by his Executive Council the Governor General in Council may by order authorise the Governor General alone to exercise in his discretion all or any of the powers which might be exercised by the Governor General in Council at meetings of the Council" [Sec 43 sub Sec (1)] Further when absent from his Council he has the power to issue on his own authority and responsibility any order to a local government or its officers, which might have been issued by the Governor General in Council. But a copy of such order must be forthwith sent to the Secretary of State who has the power to suspend all or any of the powers given to the Governor General in this respect [Sec 44 sub Sec (2)]

Apart from these powers the Governor General acts personally in certain matters also. For example, he can appoint council secretaries to assist the members of the Legislative Assembly. Again he has the power to authorise emergency expenditure. In matters of legislation he has the power to assent to or withhold his assent from a Bill passed by both chambers of the Indian Legislature. He has also the power to make an Act in certain cases of emergency, subject to his Majesty's assent. Moreover his assent is necessary for the validity of provincial Acts.

## ESTABLISHMENT OF FEDERATION

The new Government of India Act of 1935 completely changes the form of the central administration. Section 5 of the Act provides for the establishment of a Federation of India on certain conditions. His Majesty can declare by proclamation, on an address presented to him in that behalf by each House of Parliament, that from a specified day there shall be united in a Federation under the Crown called the Federation of India the Provinces and the Indian states acceding to the Federation. It will be necessary for a state in order to enter the Federation that its ruler should execute an Instrument of Accession to be accepted by His Majesty. Copies of such Instrument and its Acceptance shall be laid before Parliament as soon as possible and all courts shall take judicial notice of such Instrument and Acceptance. [Sec 6]

## THE FEDERAL EXECUTIVE

The executive authority of the Federation will generally extend to the matters with respect to which the Federal Legislature has power to make laws and to raising in British India of military, naval or air forces and to the governance of His Majesty's forces borne on the Indian establishment.

The executive authority of the Federation will be exercised on behalf of His Majesty by the Governor General. But as regards a federated state the executive authority of its ruler shall continue to be exercised except in so far as it is excluded by virtue of a Federal law.

It is very important to note that this Act vests the executive authority of the Federation in the Governor General and not in the Governor General in Council as previously. So that his Executive Council remains no longer. The Governor General will receive a salary of Rs 2,50,000 per year. Formerly this salary at the

maximum was Rs 2,56,000

### COUNCIL OF MINISTERS

There will, however, be a Council of Ministers, whose number will not exceed ten, chosen and summoned by the Governor General and holding office during his pleasure. But no minister can remain in office if he is not a member of either chamber of the Federal Legislature for a period of six consecutive months.

The ministers will aid and advise the Governor General in the exercise of his functions except in so far as he is required to exercise his functions in his discretion.

### DIVISION OF FUNCTIONS

The Act thus divides the functions of the Governor General into those which he can exercise in his discretion and those which he cannot so exercise. The ministers have no voice in the former class. The most important functions of that class include those with respect to (a) defence, (b) ecclesiastical affairs, (c) external affairs except the relations between the Federation and any part of His Majesty's dominions, and (d) the tribal areas, which term means the areas along the Frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign state.

The Governor General may appoint counsellors to assist him in the exercise of the above mentioned functions, but the number of such counsellors cannot exceed three.

The Governor General may also appoint a person to be his financial adviser.

Apart from the functions mentioned above which relate to what may be termed Reserved Subjects i.e. subjects reserved to be administered by the Governor General in his discretion and with reference to the ministers, there are various other functions which the Governor-

*General shall exercise in his discretion e.g. those with regard to the appointment and dismissal etc. of his financial adviser or of his secretarial staff, or those with regard to enacting Governor General's Acts*

*Then there are certain functions which the Governor General can exercise in his discretion after consultation with his ministers, e.g. making of rules for the convenient transaction of the business of the Federal Government*

*In this connection it is important to note that the Governor General has been given certain special responsibilities in the exercise of his functions. These responsibilities include the following —*

- (a) The prevention of any grave menace to the peace or tranquillity of India or any part thereof*
- (b) The safeguarding of the financial stability and credit of the Federal Government*
- (c) The safeguarding of the legitimate interests of minorities*
- (d) The protection of the rights of any Indian State and the rights and dignity of the Ruler thereof*

*In exercising his functions where any special responsibility is involved the Governor General shall exercise his individual judgment as to the action to be taken*

#### HIS MAJESTY'S REPRESENTATIVE

*According to this Act the Governor-General is not to exercise the functions of the Crown in its relations with the Indian States. Such functions shall be exercised by His Majesty's Representative, who will be appointed by His Majesty. But the Act has provided that it shall be lawful for His Majesty to appoint one person to fill both the offices of the Governor-General and His Majesty's Representative. It is most likely that ordinarily the same person will discharge the functions of both and the Governor-General will act in a dual capacity*

## THE CENTRAL LEGISLATURE

### *Course of Development*

A brief survey of the course of development of the central legislative authority in India will prove useful for understanding the powers of the Legislature and its relations with the Executive. The Central Legislature of India has sprung and evolved from the Executive. Originally the Executive Council of the Governor General was also vested with legislative power and while meeting as a legislative body it was known as 'the Governor General in Council at meeting for the purpose of making laws and regulations'. The defects of the executive and legislative powers being both vested in one body were soon realised and precautions were taken to remove or obviate them. Apart from the great danger of arbitrariness of the Executive this system in India was fraught with other evils. First of all, there was no Indian in the Council and the ignorance of the Britishers about Indian manners and customs, partly natural, was deplorable, as is clear from the early history of the Company rule. Secondly, the Council was lacking in legal experience and thirdly, absence of public discussion and criticism by competent men of experience made the situation worse.

To secure legal experience a Law Member was added to the Council in 1833, which proved very useful. In 1853 it was provided that while sitting as a legislative body the Council would include six additional members who were the Chief Justice of Bengal, a puisne judge, and four members nominated respectively by the local governments of Bengal, Madras, Bombay and Agra.

With this was introduced another reform which was the holding of discussions in public. Thus was established a

Legislative Council at the centre which was given the right to criticize the Executive. Then came the important Act of 1861 which provided for enlargement of the Council by the addition of members nominated by the Governor General, who were to remain members for two years. The number of these nominated members was fixed at a minimum of 6 and a maximum of 12. It was further provided that at least half of these nominated members must be non-officials. This was an important step as non-official element was introduced in the legislature. But the right to criticize the Executive was revoked. By the Act of 1892 the number of additional members and of non-official members was increased. At the same time the non-official members of the provincial Legislative Councils and public bodies like Municipal and District Boards were permitted to send<sup>15</sup> representatives to the central Legislative Council. The right to discuss the budget was also allowed under certain restrictions. The Act of 1909 increased the number of members<sup>16</sup> and gave right of electing separate representatives to the Muslim community in some of the provinces, to the Bengal and Bombay Chambers of Commerce and to the landholders of certain provinces. This Act, however, secured an official majority in the Imperial Council and a non-official majority in the Provincial councils. It is important to note that this

<sup>15</sup> These persons or bodies only made recommendations on which the Governor General appointed certain members. The principle of election was introduced later by the Act of 1909.

<sup>16</sup> The number of additional members was raised to a maximum of 60 of whom 35 were to be nominated and 25 elected. Of the nominated members not more than 28 must be officials. Then there were the Ex-officio members i.e. the 6 ordinary members of the Executive Council the Commander-in-Chief and the Lieutenant Governor of the province in which the Council sat raising the total number to 61 or including the Governor General to 67.

Act introduced the principle of communal representation

This Act permitted criticism of the Executive under certain restrictions and also empowered the Council to ask questions which however were to be merely requests for information. The Council could also pass resolutions but they were merely recommendatory or advisory.

Then came the Act of 1919 which reorganized the Legislature, introducing two chambers at the centre i.e. a bicameral legislature. It increased the size of the various legislative bodies, providing for more popular representation. At the same time to make representation more real it widened the electorate giving franchise to a larger number of the population. Another important point was the substitution of direct for indirect election<sup>17</sup>. Apart from these changes, the Act enhanced the power of the legislature considerably giving it the right to criticize the Executive and control the finances to a certain degree.

### *Constitution.*

As at present constituted, the Central Legislature, which is the supreme legislative authority in India, consists of the Governor General and two Chambers or Houses. The upper house is known as the Council of State and the lower house is known as the Legislative Assembly.

### *Composition of the Chambers*

The Council of State consists of not more than 60 members of whom not more than 20 can be official members.

<sup>17</sup> An election is indirect in which the electors themselves are elected persons as for example the non-official members of the Provincial Legislative Councils. Now the electing members themselves had been elected by the people. So that the election to the Imperial Council was to that extent indirect. Under the present Act people themselves elect members for the Imperial legislature. This is direct election.

At present there are 33 elected members, 13 nominated official members and 14 nominated non official members. For the Legislative Assembly the Act has provided that the total number of members shall be 140 out of which one hundred must be elected members and 40 non elected, out of whom 26 must be official members. But provision has also been made for increasing the number and varying the proportion of classes of members, securing however five sevenths of the total number of seats for the elected members and at least one third of the rest for non official members. At present the Legislative Assembly has got 105 elected members, 26 nominated official members and 14 nominated non official members and one nominated Berar representative.

Every Council of State continues for 5 years and every Legislative Assembly for three years from the time of its first meeting, but the Governor General has the power to dissolve either Chamber before its regular term has expired. He can also extend the duration of either Chamber, if he thinks it fit under special circumstances to do so. Place and time for holding the sessions of either Chamber are appointed by Governor General, who has also been given the right of addressing either Chamber and for that purpose he can require the attendance of the members.

### *Presidentship*

The Governor General cannot be the president of either Chamber but he appoints the president of the Council of State from among its members. He also appointed the first president of the Legislative Assembly. Subsequent presidents of the Assembly after the first are elected by the Assembly from among its members and have to be approved by the Governor General. There is also a Deputy President

of the Legislative Assembly who is a member of the Assembly elected by the members and approved by the Governor General. The appointed president of the Assembly could be removed from office by order of the Governor General, but an elected president can be removed from office by a vote of the Assembly with concurrence of the Governor General, or he will cease to hold office if he ceases to be a member of the House. Presidents and Deputy Presidents of the Assembly receive a salary.

*Membership of the Chambers*

Members of the Chambers are of three classes —(1) elected members who form the majority in both the houses, (2) nominated official members, and (3) nominated non official members.

1. Elected members —These are elected by the people at large and by certain bodies. The unit electing or as technically called returning a member or members to either Chamber is known as a constituency. Constituencies have been formed on different bases and they vary in different places and for the different Chambers. The arrangement of constituencies and distribution of seats are on a provincial basis i.e. each province returns a specified number of members, as shown, in order of the number, in the Table given on page 158.

	Province	Number of members for the Assembly	Number of members for the Council of State
1	Bengal	17	6
2	Bombay	17	6
3	Madras	16	5
4	United Province	16	5
5	Punjab	12	4
6	Bihar and Orissa	12	5
7	Central Province	6	2
8	Burma	4	2
9	Assam	4	1
10	Delhi	1	nil
11	North West Frontier Province	1	nil
	Total	105	54

No official can be elected as a member of either Chamber, and a non official on becoming an official has to vacate his seat. A person may be elected a member of both Chambers, but if he is already a member of one Chamber and elected to the other, his seat in the first becomes vacant, while if he is elected for both the Chambers he must signify, in writing, the Chamber of which he desires to be a member and his seat in the other Chamber will fall vacant.

Usually the constituencies are so arranged as to secure the representation of various communities and interests of the population, for example, in various provinces Mohammedans, Europeans, Chambers of Commerce, land holders and cities have been given the right to elect their own representatives.

For the Legislative Assembly the electoral areas are formed on the basis of administrative divisions. A Table showing the electorates of the United provinces will give an idea

of how the constituencies are arranged But there are variations from province to province

## THE UNITED PROVINCES

Name and class of constituency	number of representatives	Electoral area
1 Rural non Muhammadan	7	(1) Meerut division (2) Agra division (3) Rohilkhand and Kumaon divisions (4) Allahabad and Jhansi divisions (5) Benares and Gorakhpur divisions (6) Lucknow division and (7) Fyzabad division
2 Rural Muhammadan	5	(1) Meerut division (2) Agra division (3) Rohilkhand and Kumaon divisions (4) United Provinces Southern division (5) Lucknow and Fyzabad divisions
3 Urban non Muhammadan	1	Cities of the United Province
4 Urban Muhammadan	1	Cities of the United Provinces
5 Landholders	1	The whole province
6 Europeans	1	The whole province
Total	16	

Commerce has separate representation in Bengal, Madras and Bombay and Sikhs have separate representation in the Punjab

For the Council of State the electoral areas are very wide partly because the number of members to be elected is smaller and partly because there are certain plural member constituencies <sup>18</sup> Different systems of constituencies have been adopted for different provinces For instance, in Madras the whole province is a constituency and of the total number of five members four are elected by non Mohammadans and one is elected by Mohammadans In the United Provinces there are five constituencies, three non Mohammadan, called Central, Northern and Southern and two Mohammadan, called West and East Then there are differences in the method of voting also, for example both in Madras and Bombay one person can give as many votes as there are members to be elected, but while in the former only one vote can be given to one member, in the latter a person may give all his votes to one candidate or distribute them among the members as he likes

2 Nominated members —As we have seen above, of the nominated members some are officials and the rest non-officials Among the official members must be included all the members of the Governor General's Executive Council. But no member of the Executive Council can be a member of both the Chambers, though every such member has the right to address and attend the Chamber of which he is not a member The rest of the members, both officials and non-officials, are nominated from the several provinces or from

<sup>18</sup> A constituency is called plural member constituency in which all the members are elected on one lot, every elector having the right to vote at the same time for all the seats i.e. he has as many votes as there are members to be elected.

various classes and interests e.g. among the non official members of the Assembly are those representing the Indian Christians, the Anglo Indians, the depressed classes and labour interests. Nominations are made with a view to adjust differences in, and secure better representation of, various classes and interests.

### *Franchise and Qualifications of Electors and Candidates*

Generally speaking the franchise is based both in rural and urban constituencies on a property qualification i.e. a person possessing property of a fixed minimum value or paying a fixed minimum municipal tax or income tax or land revenue is qualified as a voter. Then again there are also educational qualifications which can enable a person to vote irrespective of his property. The franchise for the Council of State is different from that of the other legislative bodies. There the prescribed minimum is high but apart from that, certain personal qualifications are also classed as 'qualifications'. The idea is to secure among the voters more qualified persons and those having acquired administrative experience or great learning.

Apart from the special qualifications as regards property and education etc., there are certain general qualifications both for voters and candidates. For example, no candidate can be a member of two or more legislative bodies at the same time or can be below twenty five years of age. Again he must be a British subject. A person declared to be of unsound mind by a competent court or one found guilty of certain crimes cannot be a member of a legislative body. Similarly a person of unsound mind or found guilty of certain crimes or ordinarily one who is not a British subject cannot be a voter. Again no voter must be under 21 years

of age. Ordinarily a voter can record his vote only in one constituency. But he can vote in one general constituency and also in one special constituency.<sup>19</sup> Another important question is of residential qualification i.e. whether a voter or a candidate must necessarily be a resident of the particular constituency in which he votes or seeks election. For a voter it is necessary, but for a candidate it is necessary only in some provinces. For the Assembly it is enough if the candidate resides somewhere in the province.

Candidates are required to submit an account of their total expenditure on election, with a view to check corruption. Other important rules of election are designed to secure proper voting. In cases of women voters, the election officers also are women.

### *Woman Suffrage*

The question of woman suffrage or female franchise is a topic of the day. It has been widely discussed both in and outside the legislative bodies. In the Act (Government of India Act, 1919) itself the sex disqualification was retained, that is, no woman was qualified either to vote or to seek election for a legislative body. But power was given to the Provincial Legislatures to enfranchise women in their respective provinces. Later on, power was given to the Assembly and to the Provincial Councils to allow women to be elected or nominated as members. The Assembly and the Council of State were given the power to enfranchise women, but only of those provinces which had already granted this

<sup>19</sup> The various classes of constituencies can be classified into two general constituencies and special constituencies. The former are based on racial distinctions such as Mohammedan constituencies, the latter are based on special interests such as commerce landholders and universities.

franchise for their Councils. The Assembly has now granted franchise to the women of all those provinces which have enfranchised their women. The nine provinces of Madras, Bombay, Bengal, Bihar and Orissa, the Punjab, the Central Provinces, the United Provinces, Assam, and Burma have granted woman franchise and thus women can vote for the Legislative Assembly. But as yet women have not been allowed to be elected or nominated to the Assembly.

### *Powers of the Central Legislature*

Having seen the constitution of the Indian Legislature and the composition of its Chambers we shall now see the powers of this Legislature. They can be conveniently classed under three heads — (1) legislative powers, that is, powers to make laws, (2) powers of financial control, that is, powers to control the purse, which in practice means supervision and control of the raising of revenues and of expenditure, (3) powers of general supervision of the Executive. It may be noted that now the Indian Legislature has got in greater or lesser degree all the powers which are inherent in a legislature except only those which are specifically excluded from its scope by terms of the Act. Those exceptions are, however, of a very general character and are either intended to secure the supremacy of Parliament or to empower the executive Government to carry on the administration unhampered and to discharge its responsibility to Parliament and to the Secretary of State. These powers will now be noticed in some detail.

#### *(1) Legislative Powers*

The primary function of a Legislature is to legislate. When exercise of this power is legally unrestricted, the legislature is

called "sovereign", as for example the English Parliament. But when it is restricted either by the terms of the constitution<sup>20</sup> or by a superior authority, it is called "non sovereign." The Indian Legislature belongs to the latter class, because Parliament as a superior authority over it has imposed and has got the legal right to impose certain restrictions on its exercise of power. The Act itself which mentions the powers of the Indian Legislature specifies the restrictions also under which it has to function. The general restrictions imposed are the following —

In the first place, the Indian Legislature "has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India."

In the second place, the Indian Legislature cannot, unless expressly so authorised by Act of Parliament, make any law repealing or affecting (a) an Act of Parliament passed after 1860 and extending to British India, including the Army Act and the Air Force Act or (b) an Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India.

In the third place, the Indian Legislature cannot, without the previous approval of the Secretary of State in Council,

<sup>20</sup> Certain countries of the world, as the United States of America, France or Switzerland, have got a written constitution which is a body of laws determining and regulating the powers and relations of the several parts of the Government. These laws are known as constitutional laws and cannot be changed or modified as ordinary laws. They are fundamental laws and can be altered only in a special manner provided in the constitution. For example, in Switzerland a change can be effected only by a Referendum i.e. a vote of the people at large.

make any law abolishing a High Court or empowering any court which is not a High Court to pass a sentence of death on European born subjects of His Majesty or their children.

Apart from these restrictions, His Majesty in Council can always lawfully disallow any Act passed by the Indian Legislature.

Under these general restrictions the Indian Legislature has the power to make laws for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Indian Legislature has the power to make laws.

The persons for whom or things for which the Indian Legislature can make laws and places to which its jurisdiction extends are as follows —

- (1) All persons courts, places and things within British India
- (2) All subjects of His Majesty and servants of the Crown within other parts of India
- (3) All native Indian subjects of His Majesty within as well as without and beyond British India
- (4) Government officers soldiers, airmen and followers in His Majesty's India force, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act
- (5) All persons employed or serving in or belonging to the Royal Indian Marine Service

But the laws made for the Royal Indian Marine Service will apply to an offence only when the vessel to which the offender belongs is within the limits of Indian waters when the offence is committed. The Indian waters extend towards the west to the Cape of Good Hope and towards the east to the Straits of Magellan.

*Procedure for legislation*

The legislative powers of the Indian Legislature have been described above. Now we have to see how they are exercised and what is the procedure adopted for the passing of laws. Ordinarily when a Bill<sup>21</sup> is passed by one Chamber it is placed before the other<sup>22</sup> when it is passed by that also it is presented to the Governor General who may return it for reconsideration by either chamber. If he gives his assent to it<sup>23</sup> it becomes an Act, which however will become void if His Majesty in Council disallows it. In case he does not give his assent, he will either withhold his assent from the Bill or reserve the Bill for the signification of His Majesty's pleasure thereon. In the former case it will not become an Act, in the latter it will become an Act only when His Majesty in Council signifies his assent and that assent is notified by the Governor General.

If either Chamber rejects a Bill it ordinarily ends there. If one Chamber passes it but it is not passed by the other Chamber within six months, then the Governor-General has the discretionary power to refer it to a joint sitting of both Chambers.

As a rule of procedure when a Bill is sought to be introduced in a House its permission has to be taken. Again there are certain specified subjects for which the previous sanction of the Governor General is necessary before introducing any measure with respect to them. Such are the

<sup>21</sup> A legislative proposal submitted to a legislature in a form in which if accepted it becomes a law is called a Bill. When the Bill is accepted or technically passed it is known as an Act.

<sup>22</sup> A bill can be introduced in either Chamber but it must be passed by both.

<sup>23</sup> After giving his assent the Governor General must send an authentic copy of the Act to the Secretary of State.

measures affecting

- (a) The public debt or Indian revenues,
- (b) The religion or religious rites and practices of any class of subjects in India,
- (c) The discipline or maintenance of any part of His Majesty's military, naval or air forces,
- (d) The relations of the Government with foreign princes or states

Of the same category are measures

- (a) Repealing any Act or Ordinance made by the Governor General,
- (b) Repealing or amending any Act of a provincial Legislature
- (c) Regulating a provincial subject, not declared by rules under the Act to be subject to legislation by the Central Legislature

### *Special Powers of the Governor General*

The Governor General has got certain special powers with respect to legislation which may be classed under three heads (a) powers to stop legislation in any Chamber, (b) powers to pass a measure in spite of the opposition of the Chambers and (c) powers to pass a measure without reference to the Chambers

(a) In case a Bill or an amendment to a Bill has been or is proposed to be introduced in either Chamber the Governor General may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of British India or any part thereof and direct all further proceedings with respect to that Bill, clause or amendment to be stopped

(b) The Governor General has the power to make an Act on his own authority. Such an Act is expressed to be made

by the Governor General, and must be laid, as soon as practicable after it has been made, before both Houses of Parliament. Then after a lapse of a definite period it is presented for His Majesty's assent. The Act cannot have effect until it has received the assent except when the Governor General considers that a state of emergency exists to justify its immediate operation and directs that it shall come into operation forthwith. It is however subject to disallowance by His Majesty in Council.

This, however, is an emergency power and the Governor-General can take recourse to it only when he certifies that the passing of a particular Bill is essential for the safety, tranquility, or interests of British India or any part thereof.

The following is the procedure adopted for passing of such a Bill. When either Chamber refuses leave to introduce any bill or fails to pass it in a form recommended by the Governor General and when the bill has not already been passed by the other Chamber then on the certification of the Governor General referred to above it will be laid before the other Chamber. If that Chamber consents to it it will become an Act after the Governor General has signified his assent to it. If however the Chamber does not consent to it, it will become an Act after the Governor General's signature. If on the other hand the bill has already been passed by the other Chamber, it will become an Act after the Governor General's signature.

(c) Under certain circumstances the Governor General has special powers of legislation without any reference to the Assembly or the Council of State. This power is exercised in two different cases under different circumstances. In one case the legislative measure passed by him is called an Ordinance and in the other it is called a Regulation.

An ordinance can be made and promulgated for the peace and good Government of British India or any part thereof in cases of emergency<sup>21</sup> An ordinance has the force of law like an Act passed by the Indian legislature, but it has such force only for a period not exceeding six months from the time of its promulgation Like an Act of the legislature it is also subject to the restrictions and limitations imposed upon the legislature and it can be disallowed by His Majesty in Council in the same manner as an Act of the Indian legislature

A regulation has also the force of law and is subject to disallowance like an Act of the Indian legislature It is made in the following manner

A local Government to which this provision may be made applicable by the Secretary of State by a resolution in Council may propose to the Governor General in Council the draft of any regulation for the peace and good Government of its territory, giving also reasons for such a proposal The Governor General in Council then may consider and approve this draft Thereafter when the Governor General has given his assent to it it will become law An authentic copy of every such regulation must be sent to the Secretary of State in Council

## (2) *Financial control*

A very important power of a legislature is its control over the finances of the country Ordinarily power in a large measure belongs to the lower House But in India, as we have seen above in the sphere of legislation, the Governor General

<sup>21</sup> For example during the political upheaval due to civil disobedience movement and various unlawful activities a number of ordinances had to be passed by the Government of Lord Irwin

is the most powerful part of the Legislature. In the matter of finance he is still more powerful. However, the powers enjoyed by the two Chambers are also considerable. It is more so in view of the fact that previously the financial control was almost completely vested in the Executive Government, the Legislative Council being allowed only to discuss the annual budget under important restrictions. The Act of 1919 is a step towards the introduction of responsibility at the centre<sup>21</sup>.

Under the above Act the estimated annual revenues and expenditure of the Governor General in Council must be annually laid before both Chambers of the Legislature in the form of a statement, and the proposals of the Governor-General in Council for the appropriation of revenues or moneys, except as regards certain specified heads of expenditure, must be submitted to the vote of the Legislative Assembly in the form of demands for grants and the Assembly will have the right either to give or refuse its assent to any demand or reduce the amount of a particular demand by reduction of the whole grant.

The heads of expenditure not subject to the vote<sup>22</sup> of the Assembly are the following —

(I) Expenditure of which the amount is prescribed by

<sup>21</sup> The present political demand of the Indian people has two definite aims in view—responsibility at the centre and provincial autonomy. Responsibility at the centre refers to the responsibility of the Executive Government to the Chambers of Legislature particularly to the lower house. This responsibility in practice means the carrying on of the Government according to the wishes of the majority of the House which is secured by remaining in office of that Cabinet (that is members of the Executive collectively) which commands majority vote in the House and its resignation when it fails to command such majority. In India however there is still nothing like that and the Executive has remained in office in spite of an adverse vote of the House.

<sup>22</sup> They are not even open to discussion by either Chamber when the budget is considered unless the Governor-General otherwise directs.

or under a law

(II) Expenditure classified as ecclesiastical, political and defence by order of the Governor General in Council

(III) Interest and sinking fund charges on loans

(IV) Salaries, pensions or other sums payable to certain specified persons including almost all high officials

### *Special Powers of the Governor-General*

Though the Legislative Assembly has been given the power of voting the appropriation of revenues referred to above, this power is very materially restricted. In the first place, no proposal for the appropriation of any revenues or moneys for any purpose can be made except on the recommendation of the Governor General. Secondly, the demands as voted by the Assembly are submitted to the Governor General in Council who has the power to restore any grant refused or reduced by the Assembly, if he is satisfied that such grant is "essential to the discharge of his responsibilities". In the third place, he has got the emergency power of authorising any expenditure without reference to the Assembly which he may consider 'necessary for the safety or tranquillity of British India or any part thereof'.

### *(3) Powers of Supervision*

Ordinarily the Legislature, particularly the House representing the people at large, is regarded as safeguarding the interests of the people. It usually enjoys the power to control the executive and supervise its actions, in practice making it resign and leave office whenever it loses its confidence in it. In India however neither Chamber enjoys this power and the Executive is not responsible to the Legislature. However, considerable powers have been given to the Chambers under the above Act. They can discuss

and criticize executive measures and can pass resolutions and ask questions about the administration. The members enjoy freedom of speech and vote subject to the rules and standing orders affecting the Chambers.

### *Martial law and Act of Indemnity*

At this place it may be noted that certain circumstances may arise in which the executive may be compelled to take action not justified by ordinary law or even contrary to certain laws. These are circumstances when either there may be an invasion or a wanton defiance of Governmental authority during insurrection etc. When the executive sees that it cannot control the situation or maintain peace by ordinary exercise of its authority it resorts to extraordinary means and where necessary proclaims "martial law." This essentially is suspension of ordinary law and temporary establishment of a Government by military tribunals. The ordinary civil or municipal law is for the time being in abeyance and authority of the Government is maintained by whatever use of force or blood shed necessary for the occasion. During the disturbances of the last political upheaval martial law had to be proclaimed more than once and in different places, as in Sholapur, Peshawar and elsewhere.

Such extraordinary exercise of executive authority can only be justified by the gravity of the situation. However, it must be borne in mind that the acts committed during such exercise of power which are breaches of law remain so and can be punished as such unless the Legislature makes some provision for legalising them. Such a provision is usually made by an Act of Indemnity which the legislature passes afterwards with a view to protect military men and others against their illegal acts committed bonafide. The object of such an Act is "to make legal transactions which

when they took place were illegal, or to free individuals to whom the statute applies from liability for having broken the law"<sup>7</sup> An Act of Indemnity was passed after the Punjab disturbances in 1919. In India the special powers of the Governor General to make ordinances can also be used to meet a serious type of situation. Such use of the power was made when in 1930 the Sholapur Martial Law Ordinance was passed.

### THE FEDERAL LEGISLATURE

According to the new Government of India Act of 1935 the Federal Legislature is to consist of His Majesty represented by the Governor General and two Chambers respectively known as the Council of State and the House of the People or the Federal Assembly. The Council of State shall be a permanent body not subject to dissolution but as near as may be one-third of its members shall retire in every third year. There is a useful provision introduced by the Act. But the life of each Federal Assembly shall be five years only. Each Chamber will choose its President and Deputy President from among its members. But the President and the Deputy President of the Assembly will be known as Speaker and Deputy Speaker respectively. It is noteworthy that none of the members of either Chamber shall be entitled to receive such salaries and allowances as the Federal Legislature may by Act determine from time to time. No person can be chosen a representative of British India if in the case of a seat in the Council of State he is less than 30 years of age and in the case of a seat in the Assembly less than 25 years.

### ALLOCATION OF SEATS (1) COUNCIL OF STATE

The Council of State shall consist of 156 representatives of

<sup>7</sup> See Dicey's Law of the Constitution p. 47 also p. 347

*British India and not more than 104 representatives of the Indian States. Of the former 130 will be chosen by the provinces according to the table given below and 6 will be chosen by the Governor General in his discretion.*

*Table showing allocation of seats for British India*

1		2	3	4	5	6	7
Province		Total seats	General seats	Seats for scheduled Castes	Sikh seats	Mohammadans seats	Women's seats
1	Madras	20	14	1		4	1
2	United Provinces	20	11	1		7	1
3	Bengal	20	8	1		10	1
4	Bombay	16	10	1		4	1
5	Bihar	16	10	1		4	1
6	Punjab	16	3		4	8	1
7	Central Provinces & Berar	8	6	1		1	
8	Orissa	5	4			1	
9	Assam	5	3			2	
10	Sind	5	2			3	
11	North West Frontier Province	5	1			4	
12	Delhi	1	1				
13	Ajmer Merwara	1	1				
14	Coorg	1	1				
15	British Baluchistan	1				1	
Total		140	75	6	4	49	6

*Of the remaining 10 seats the Europeans have 7, the Indian Christians 2, and the Anglo Indians 1*

*A very noteworthy feature of this table is the allocation of separate seats for women and the scheduled castes. The term scheduled castes corresponds to the term depressed classes*

*Among the states Hyderabad has the largest number of seats i.e. 5, Mysore, Kashmir, Gwalior, and Baroda have each 3 seats, some states have 2 seats each e.g. Jaipur, Udaipur, Indore, Rewa, Travancore, Patiala and others, while some have only one each, e.g. Benares, Rampur, Bharatpur and others*

#### (ii) FEDERAL ASSEMBLY

*The Federal Assembly shall consist of 250 representatives of British India as given in the table below and not more than 125 representatives of the Indian States*

*Table showing allocation of seats for British India*

Provinces		Total seats	Total of General seats	General seats reserved for Scheduled castes	Sikh seats	Mohammedan seats	Anglo Indian seats	European seats	Indian Christian seats	Seats for representatives of commerce and industry	Landholders seats	Seats for representatives of labour	Women's seats
1	Madras	37	19	4		8	1	1	2	2	1	1	2
2	United Provinces	37	19	3		12	1	1	1		1	1	1
3	Bengal	37	10	3		17	1	1	1	3	1	2	1
4	Bombay	30	13	2		6	1	1	1	3	1	2	2
5	Bihar	30	16	2		9		1	1		1	1	1
6	Punjab	30	6	1	6	14		1	1		1	1	1
7	Central Provinces and Berar	36	9	2		3					2	2	2
8	Assam	15	4	2		3		1	1			1	1
9	Orissa	20	4	2		3							
10	Sind	5	4	1		1							
11	N. W. F. Province	5	1	1		3		1					



Of the remaining four seats three are allotted to representatives of commerce and industry and one to representative of labour

A noteworthy feature of the table is the representation of so many classes and interests

Among the States Hyderabad has the largest number of seats i.e. 16, Mysore has 7, Travancore 5, Kashmir and Gwalior 4 each, Baroda and Jaipur 3 each, some states have 2 seats each e.g. Indore, Udaipur, Rewa, Patiala and others while some have only one, e.g. Benares, Rampur, Bharatpur, and others

### LEGISLATIVE POWERS

The federal Legislature can make laws for the whole or any part of British India or for any Federal State

The matters with respect to which it can make laws are given in the 7th schedule appended to the Act. List I mentions the subjects with respect to which only the Federal Legislature can make laws. They are given under 39 heads and include His Majesty's naval, military and air forces borne on the Indian establishment, external affairs, currency, census, post and telegraphs, Federal railways, arms and ammunitions, duties of customs, salt etc. List II mentions the subjects with respect to which both the Federal Legislature and Provincial Legislatures have power to make laws. They are given under 36 heads and include civil and criminal procedure, arbitration, marriage and divorce, trusts and trustees, legal, medical and other professions, factories, trade unions, electricity etc. List III mentions the subjects with respect to which the Federal Legislature has not and a Provincial Legislature has the power to make laws. They are given under 34 heads and include the administration of justice, police, prisons, education, agriculture, forests, unemployment etc.

While looking at the powers of the Federal Legislature to make laws it must be borne in mind that as regards the states it cannot make laws for a Federated State "otherwise than in accordance with

the Instrument of Accession of that State and any limitations contained therein" [Section 101]

### LEGISLATIVE POWERS OF THE GOVERNOR GENERAL

As at present the Governor General will be given certain special powers of legislation. In this matter also the distinction between the functions which he can exercise in his discretion and other functions is important. Generally he has the power to promulgate ordinances in emergency cases. But such an ordinance can be promulgated only when the Federal Legislature is not in session and it will cease to operate at the expiration of six weeks from the reassembly of the Legislature or before that period if resolutions disapproving it are passed by both Chambers of the Legislature.

But as regards the functions which the Governor General is required to exercise in his discretion he can promulgate ordinances just as he can under the present Act and they can have force for six months. Again with respect to these functions he has the power under certain circumstances to pass Acts which will be known as Governor General's Acts.

### OTHER MATTERS

As regards other matters especially the procedure of legislation the new Act does not introduce any important alteration. The question of franchise is a very important and we find that the new Act has extended the franchise by lowering the minimum qualifications of voters e.g. a man above 21 is permitted to be a voter, or as in U.P. a man who is permitted to have passed the upper primary examination will have a right to vote.

### THE CENTRAL JUDICIARY

#### THE FEDERAL COURT

In the matter of judicial administration the new Act of 1935

has introduced a very important change. Under the provisions of the Act there shall be established a Federal Court consisting of a Chief Justice of India and such number of puisne judges as his Majesty may deem necessary. Ordinarily however this number shall not exceed six. This court shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor General, from time to time appoint.

The judges of this court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until they attain the age of sixty five years.

So that this Act now creates a central court for the whole of India and we shall now have like the Central Executive and the Central Legislature a Central Judiciary also.

#### JURISDICTION OF THE FEDERAL COURT

The Federal Court shall have both original and appellate jurisdiction. Its original jurisdiction shall be exercised with respect to any dispute between any two or more of the following parties — the Federation, any of the Provinces, and any of the Federated States. But this jurisdiction will extend to a dispute of this nature only to the extent that it involves any question on which the existence or extent of a legal right depends. Such a question may be either of law or of fact.

But there is an important restriction on the powers of the Federal Court in this matter as regards judgment, for the Federal Court can pronounce only a declaratory and no other judgment.

In its appellate jurisdiction the Federal Court shall hear appeals both from the decisions of the High Courts in British India and from those of a High Court in a Federated State. In the former case such an appeal will lie from any judgment, decree or final order of the High Court if that High Court certifies that the case involves a substantial question of law as to the interpretation of the Act or any Order in Council made under the Act.

*In the case of a Federated State the appeal will be by way of special case to be stated by the High Court concerned for the opinion of the Federal Court. Such an appeal can lie on the ground that a question of law has been wrongly decided and that question (1) concerns the interpretation of this Act or of an Order in Council made under it, or (2) concerns the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or (3) arises under an agreement made in relation to the administration of a law of the Federal Legislature in that State. As regards the form of judgments in appeals it is provided that when an appeal is allowed the Court will remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for that appealed against and that court shall give effect to the decision of the Federal Court.*

*It has been expressly and clearly provided by the Act in section 210 that all authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.*

#### APPEALS AGAINST THE DECISIONS OF THE FEDERAL COURT

*Provision has been made for appeals against the decisions of the Federal Court. Such an appeal will lie to His Majesty in Council under the following conditions:*

(a) *When the court has exercised original jurisdiction, an appeal can lie from its judgment if the dispute (i) concerns the interpretation of the Act or of an Order in Council made under it, or (ii) concerns the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any state, or (iii) arises under an agreement made in relation to the administration of a law of the Federal Legislature in a State.*

(b) *In other cases by leave of the Federal Court or of His Majesty in Council.*

### *Central Administration—(continued)*

The names of the departments into which the subjects of administration have been divided and which are in charge of the individual members of the Executive Council have been given in the last chapter. Here a more detailed account will be given in order to make clear the matters administered by them and the mode of such administration.

#### *The Foreign and Political Department*

The Foreign and Political department is in charge of the Governor General himself. Its chief function is the supervision of foreign affairs as far as they come within the scope of the Government of India and the supervision of the Indian states. The latter class of supervision varies with the different states as they enjoy different degrees of sovereignty. As a matter of fact this department has two sides and while other departments have one secretary each, this has two, one for foreign and the other for political affairs. The political side deals with the states. The political officers, that is, the officers connected with the administration of the states, through whom the British Government exercises its powers over the states, are known as Residents or Agents. In the larger states like Hyderabad, Mysore and Kashmir there are Residents. In the Agencies such as the Central India Agency or the Rajputana Agency there are Agents to the Governor General who are assisted by local Residents as in

Udaipur or Jaipur or by Political Agents as in Bhopal or for Bandelkhund states. In the provinces the larger states have got Political Agents while in smaller States the duties of the Agents are performed by the Collector of the district or the Commissioner of the division in which they are situated.

This department also controls the administration of certain parts of British India, for example, the North West Frontier province which is administered by a Governor and Agent to the Governor General, British Baluchistan which is administered by the Agent to the Governor General and Chief Commissioner, Baluchistan, Ajmer Merwara which are administered by the Agent to the Governor General in Rajputana as Chief Commissioner, and Coorg which is administered by the Resident in Mysore as Chief Commissioner.

This department also looks after the Chiefs' Colleges.

### *The Home Department*

The Home Department is in charge of the general internal administration of the country dealing with internal politics, the Indian Civil Service, police and jails, law and justice, etc.

### *Indian Civil Service*

The Indian Civil Service<sup>1</sup> was started in 1793. Certain higher posts are reserved for the members of this service, for example those of the secretary, joint secretary and deputy secretary to the Central Government in certain departments.

<sup>1</sup> This service was called *covenanted* because its members entered into covenants binding themselves neither to take part in trade nor to take presents. In 1853 this service was made open to competition. But the competitive examination was held in London only. But since 1923 it is also held in India.

or of members of the Board of Revenue in provinces or of Commissioners of customs. The Act of 1919 has established a Public Service Commission which discharges such functions in regard to the recruitment and control of the public services as the Secretary of State in Council may by rules assign to them.

The Government of India as such has no Civil Service of its own and its officers are either directly recruited by contract or borrowed from the Local Governments.

### *Police and Jails*

The Government of India has no police service except perhaps the Delhi Imperial Area Police. The management of the police and of the jails is in the hands of the provincial Governments and will be dealt with in connection with provincial administration.

### *Law and Justice*

The subject of Civil and Criminal law is a central subject but the administration of justice is in the hands of provincial Governments and will be dealt with in the chapter on Provincial Administration.

### *The Law Department*

The Law Member who is in charge of law or legislative department is the legal adviser of Government. He also assists the Government in drafting Bills to be submitted to the Indian Legislature.

### *The Finance Department*

The Finance Department supervises the collection and expenditure of revenues. The Finance Member prepares the

budget i.e. the estimate of receipts of revenues and expenditure for the next year and places it before the Assembly every year in the spring. Sometimes a supplementary budget is submitted e.g. the one submitted in September 1932. The subject of finance is a complex one and the financial organisation of India has been subject to unsteady changes.

### *Financial Control*

The chief question connected with finance is the financial control i.e. the determination of the authority which controls the purse and sanctions the expenditure. This has been not an easy problem of Indian finance. Parliament itself does not at all control the finances of India, except as regards expenditure on military operations outside the frontiers of India. It also now controls the expenditure for the maintenance of the Secretary of State and his establishment but that is not a charge on the Indian revenues. The Secretary of State generally controls the revenues, and all expenditure whether in British India or elsewhere is subject to the control of the Secretary of State in Council and the concurrence of the majority of votes at a meeting of India Council for any grant or appropriation of the revenues, so that the financial control has been vested in the Secretary of State in Council. But in practice he has allowed great latitude to the Governments in India and the latitude has been further increased in view of the spirit of the Act of 1919 by rules made under it. Now his sanction is only required in certain cases particularly affecting all India services or certain pensions and gratuities etc. These items of expenditure, it may be noted, are not submitted to the vote of the legislature and the control over them of a higher authority is essential. Then comes the chief problem of sharing of control of the finances between the Government of India and the Provincial Govern-

ments and, connected therewith, the sharing of control between the Executive Government as such and the Legislature as representative of the people

### *Central and Provincial Governments*

In the early days of British rule the control of finances was in the hands of the respective provincial governments which were independent of the Government of India (or the Central Government) and were responsible only to the authorities in England. Later on however when the Government was transferred to the Crown the Government of India took the control of the finances almost completely in its own hands and left the provinces merely as its agents, interfering in their managements even in details. This produced a bad result, for the provinces had to depend for the smallest items of expenditure on the sanction of the central government and it made no difference whether they improved or not their own revenues. They were not to gain even by effecting local economy. Apart from this double disadvantage of lack of interest in development of resources and loss of incentive to economy, there was the third disadvantage of frequent wrangling between the central and provincial governments which produced undesirable results.

To avoid all this a process of decentralisation was adopted and provincial governments were given more and more control over their finances. In the beginning a definite sum was granted to each government, which provided incentive to economy but later on a share in the revenues was allotted instead of a fixed grant. This secured the advantage of providing an incentive not only to economy but also to developing of resources. In the next stage of financial organisation items of revenues and expenditure

were divided between the central and local governments. To the central government were exclusively allotted the revenues derived from customs, salt and opium and tribute from states, to the local governments were allotted revenues derived from registration. Land revenue, excise, stamps and assessed taxes were partly in the hands of central and partly in the hands of local governments and were known as divided items of revenues.

Similarly the items of expenditure were also divided into three classes. Home charges, defence, central administration, foreign affairs and interest on debts were to be provided for by the Government of India, while the provincial governments provided for police, education, health and sanitation. The subject of irrigation was a divided one.

But this system had also to be changed and the Act of 1919 introduced important changes particularly with a view to secure more provincial responsibility. The important changes introduced by the Act comprised a clear demarcation of central (or imperial) and provincial finance and the system of having divided items i.e. of sharing revenues was completely abolished. Now the provinces got control over the whole of land revenue and revenues derived from excise and stamps while the whole of income tax, customs and taxes on salt and opium belonged to central finance. Thus the revenues of the central government were very much reduced. To meet this reduction the local governments were required to make an annual contribution. This contribution varied from province to province. But the total contribution came to a little less than ten crores of rupees. This was intended to be only a temporary measure and in 1928-29, it was abolished and removed from the budget. Apart from this the provincial governments were given more latitude as regards expenditure and the Government

of India considerably relaxed its control. Formerly the budget had to be annually submitted for sanction to the Government of India, but now such a sanction is required only in certain cases and the relaxation of control is still greater in respect of transferred subjects. The budget has now to be submitted before the Legislative Council. At the same time the local governments have also been allowed to raise loans for certain purposes on the security of their revenues. The question between the central and local governments having thus been solved, rules have been made authorising the Governors of provinces to apportion the revenues between the reserved and the transferred subjects.

But this organisation too is not quite satisfactory and has been the subject of detailed consideration during the last few years.

In 1924-25 another important change was introduced separating the railway finance from general finances. This was necessary because railways are run on commercial lines. Now the railways pay a definite annual contribution to the general revenues. But owing to economic depression they have not been able to make the contribution in the last few years.

### *Financial Position*

Financial position practically means the relative position of receipts from revenues and expenditure including the position as regards debts<sup>1</sup>. Upto the beginning of the European War the finances were rather stable. But after

<sup>1</sup> The national debt began with Rs. 107 crores the amount of company's debts taken over by the Government of India when the administration was transferred from the Company to the Crown. It rose to Rs. 411 crores in 1914 while in 1919 it became to Rs. 512 crores. In 1914 the total debt amounted to Rs. 905.65 crores while in 1933-34 it amounted to Rs. 1212 crores.

the Afghan War in 1919 the position became alarming and the accumulated deficits rose to Rs 100 crores which necessitated retrenchment and the budget of 1923-24 showed a surplus instead of a deficit. Successive years also showed a surplus, but in 1928-29 there was again a huge deficit. This was the year in which the provincial contributions were abolished. Then came a year of surplus followed by two years of deficit, again followed by two years of surplus, while the revised budget of 1934-35 and the budget of 1935-36 also show a small surplus.

The following table will give an idea of the receipts and disbursements of the revenues of the Central Government.

## Revenue

Heads of Revenue	Budget Estimate 1935-36	Revised Estimate 1935-36	Budget Estimate 1936-37
Principal Heads	Rs (in lakhs)	Rs (in thous ands)	Rs (in thous ands)
Customs	51.84	54,71.00	54,82.00
Taxes on Income	16.40	16,80.00	15,67.00
Salt	8.73	8,70.00	8,75.00
Opium	61	61,70	47.41
Other heads	1.91	1,89.69	1,87.67
Total Principal Heads	79.49	82,72. 9	81,59.08
Irrigation Net Receipts		24	19
Interest	83	70.19	62.33
Civil Administration	93	95.76	98.03

Heads of Revenue	Budget Estimate 1935-36	Revised Estimate 1935-36	Budget Estimate 1926-37
Civil Works	23	25,72	26,80
Currency and Mint	1,07	1,22,04	1,26,13
Miscellaneous	36	38,94	33,40
Extraordinary Receipts		3	
Provincial contributions and miscellaneous ad- justments between Cen- tral and Provincial Governments			
Posts and Telegraphs Net Receipts	71	81 77	82,29
Railways Net Receipts (as per Railway Budget)	32,25	31,96,76	31,73,66
Defence Receipts	4,93	5,08,34	4,93 19
Total	1,21,00	1,24,37,18	1,22,77,15

For comparison actual accounts of certain years are given below —

Year	1921-22	1924-25	1927-28	1930-31	1933-34
Total revenue in lakhs of rupees	1,15,21	1,38,04	1,23,04	1,24,60	1,20,37

*Expenditure*

Heads of Account	Budget Estimate 1935 36	Revised Estimate 1935 36	Budget Estimate 1936 37
	Rs (in lakhs)	Rs (in thous ands)	Rs (in thous ands)
Direct Demands on the Revenue	4,20	4,24,07	4,17,73
Irrigation Interest and Miscellaneous charges	5	5,56	3,60
Civil Administration	10,17	10,46,04	11,10,12
Currency and Mint	32	43,11	34,01
Civil Works	2,25	2,28,54	2,56,14
Superannuation Allowances and Pensions	3,20		
Miscellaneous	1,25	4,43,95	4,17,32
Extraordinary payments	1	2,8,89	40,34
Posts and Telegraphs			
Interest on Debt	84	81,79	89,50
Railways Interest and Miscellaneous charges (as per Railway Budget)	3,2,25	31,96,76	31,73,66
Defence Services	49,91	50,06,34	50,28,19
Interest	10,39	10,62,78	9,20,17
Reduction or Avoidance of Debt	3,00	3,00 00	3,00,00
Miscellaneous Adjustment between the Central and Provincial Governments	3,05	3,13,57	4,66,57

Heads of Account	Budget Estimate 1935 36	Revised Estimate 1935 36	Budget Estimate 1936 37
Capital outlay charged to Revenue	5	84	37
Total expenditure charged to revenue	1,20,94	1,24,37,18	1,22,70,12
Surplus	6		7,03
Total	1,21 00	1,24,37,18	1,22,77,15

*Note 1* Direct Demands on the Revenue comprise various heads, chiefly Customs, Taxes on Income, Salt and Opium. In the Budget Estimate of 1935 36 the sum of Rs 4 crores 20 lakhs for Direct Demands was composed of Rs 1 crore 15 lakhs for Customs, Rs 92 lakhs for Taxes on Income, Rs 1 crore 18 lakhs for Salt, Rs 36 lakhs for Opium and the rest Rs 39 lakhs for other heads.

*Note 2* The increase in the Miscellaneous Adjustments in the budget of 1936 37 is due to provision for subventions to the new provinces of Sind and Orissa.

### Explanation

Budget estimate is the estimate of revenues and expenditure for the next year submitted as a budget to the Legislative Assembly. The budget is then revised and we get a revised estimate for the current year. An actual account is only available for the preceding year.

Under the head railway revenue and expenditure are shown to be the same. This is due to the separation of the railway budget which balances its income and expenditure separately and the balanced budget is given here.

*Heads of revenues and expenditure*

A glance at the tables shows that the most important sources of central revenues are customs and income tax, while the most absorbing items of expenditure are the military services and interests on debts. Indian people have constantly urged the Government to reduce its military expenditure which in spite of a little reduction is still more than 40% of the total revenues. An important means of effecting the desired reduction would be considerable Indianisation of the military services, for British soldiers and officers are much more costly than Indian soldiers and officers.

The items of revenue and expenditure given in the table explain themselves, but a few of them deserve special notice.

*Customs*

The source of customs is a most important one. This tax is levied upon goods imported into the country or exported from it. It now includes the important duty on imported liquors which was formerly under the head of excise. Excise is now a provincial subject and will be dealt with in that connection.

This tax has been varying from time to time. Generally as a rule it is so levied as to have a rising scale in order to serve the interest of the country best. So that agricultural implements, manures, etc. and certain raw materials e.g. hides and skins are exempt from such duties. Firewood, printing materials, machinery, etc. are allowed at 2½ per cent and railway materials and ships etc. at 10 per cent. Certain drugs and medicines, as carbolic etc. are admitted at 25 per cent. Explosives also are admitted at

25 per cent. Arms and ammunitions are usually allowed at the high rate of 50 per cent and so also toys while boots and shoes at 25 to 30 per cent or 5 annas and 6 annas respectively per pair (whichever is higher). It may be noted here that in most cases a preferential rate of duty is allowed for articles produced or manufactured in the United Kingdom or British colonies. For example on leather boots and shoes or certain kinds of paper the duty is ordinarily 30 per cent while if made in United Kingdom it is only 25 per cent. Again unmanufactured ivory and bees wax pay 30 per cent ordinarily and 20 per cent if they come from a British colony. Tea pays 5 annas per pound but if imported from a British colony it pays only 3 as. Export duties have also been levied on jute, hides and skins and also on rice. The export duty on rice is two annas three ptes per maund. As a rule customs duties are levied for revenue purposes. The question how far they are and should be protective is an intricate one. However the protection of important nascent Indian industries as cotton and iron is a consideration which weighs in levying these duties.

### *Income Tax*

The income tax was first levied in 1860. This has also been a subject of great change from time to time. Originally the minimum taxable income was five hundred rupees. In the year 1903 it was raised to one thousand rupees. It was afterwards raised to two thousand rupees. But again it was brought down to one thousand. Now it is again two thousand. As a matter of fact in times of financial stringency recourse is taken to this tax and the finance bill of 1931 also imposed a supertax. Income tax is so graduated as to weigh less heavily on people of lesser income. For example, between

one thousand and 1999 it was at two pies per rupee in 1931 1932 and four pies a rupee in 1932 33. But in the budget of 1933 34 it was reduced to two pies on income between one thousand and 15 hundred. Between two thousand and 5 thousand it is six pies a rupee between 5 thousand and ten thousand, nine pies a rupee between 10000 and 15,000, one anna in the rupee, between 15000 and 20000 one anna four pies, between 20000 and 30000 one anna and seven pies, between 30000 and 40000 one anna and eleven pies, between 40000 and one lakh, two annas and one pie, and for a lakh or above it is two annas and two pies a rupee. There was also a surcharge of 12½ per cent in 1931 32 and 25 per cent in 1932 33. It continued in the budgets of 1933 34 and 1934 35 and reduced later. The super tax is also graduated with the same view and is charged on incomes over thirty thousand rupees, the highest rate being six annas a rupee. Incomes from agricultural sources are exempted.

### *Salt*

The salt tax has been a subject of great criticism. This is the only tax which must be paid even by the poorest people. This tax is levied both on the salt manufactured in India and on that imported from abroad. The duty has been varying from time to time. From 1881 to 1903 it was Rs. 2½ per maund. Then it was gradually reduced to rupee one in 1907. In 1916 it was raised to Rs. 1 4/ and in 1923 to Rs. 2 8. But it was again reduced in 1924 to Rs. 1 4/. From 1931 however it has been increased to Rs. 1 13 6 (reduced in 1935 by 2) on imported salt and Rs. 1 9 on manufactured salt. Formerly both were equal.

### *The Army Department*

The Army Department is in charge of the Commander

in Chief himself, who is also a member of the Executive Council. It may be noted that the expenditure on army and the direction of military policy have been excluded from the control of the Legislature, but the army administration is represented in the Legislative Assembly by the Army Secretary and in the Council of State by the Army Member. The Commander in Chief has also got a military Council to assist him, of which he is the President. This Council is merely an advisory body.

For military purposes the country has been divided into five sections, four are known as Commands, namely, Northern, Western, Southern and Eastern commands, with their headquarters at Murree, Quetta, Poona and Nainital respectively, the fifth is the Independent District of Burma. The commands are each under a General Officer Commanding in Chief, the Burma District is under a Commander.

Apart from regular forces we have got —(1) The Auxiliary force whose function is to render local service in emergency cases for home defence. (2) Indian Territorial Force (comprising Provincial Battalions, Urban Units and University Training Corps). It is mainly intended to give military training to the Indian people, but in hour of need it may have to enforce the regular army in and outside India. (3) Indian State forces which help the Government of India in times of need. The total authorised strength of the state forces is 47,763.

The average strength of the Army in India in 1929 was as follows —British troops 59,827, Indian troops 154,580, both showing a slight addition to that of 1928.

The Army Department also deals with the administration of the Royal Indian Marine and the Royal Air force in India.

The Royal Indian Marine in a sense began in 1612. But it has undergone various changes of organisation and as at present organised is one of the fighting forces of the Empire. It has purely Naval duties and is commanded by a Rear Admiral on the active list of the Royal Navy.

The India Air Force came into being in October 1932. It is commanded by the Air Officer Commanding in India.

### *Department of Commerce*

The Department of Commerce came into being during the Viceroyalty of Lord Curzon. Originally there was one department of Commerce and Industry but in 1925 it was divided into two separate departments. The department of Commerce includes for administrative purposes the subject of railways also. It deals with trade and commerce. The duties of this department include collection and preparation of statistics. It looks after customs tariffs and import and export regulation. Shipping also comes within its scope.

### *The Railways*

As for the railways they are actually administered by a Chief Commissioner assisted by a board. The Chief Commissioner advises the Government of India. In 1924-25 the railway budget was separated from general finance. With this separation it was also provided that the railways would pay to the general revenues a definite annual contribution which was to be the first charge on railway earnings.

The Government of India is itself a great owner of railways and directly manages several lines. The question of state and company management has been widely discussed but the Legislative Assembly in 1923 passed a resolution

favouring state management and as a result of that the East Indian and the Great Indian Peninsula Railways were taken under state management on January 1, 1925 and July 1, 1925 respectively as their contracts terminated. The Oudh and Rohilkhand Railway was amalgamated at the same time with the East Indian Railway. Similarly on the termination of their respective contracts the Burma Railway was taken under direct management on January 1, 1929 and the Southern Punjab Railway on January 1, 1930. According to the figures of 1932, the total route mileage of Indian railways was 42813 of which the state owns 31709 miles i.e. about 75% of the whole, out of which it directly manages 18897 miles, which comes to about 45 per cent of the whole. Some of the railways are still managed by private companies, almost all of which are assisted by the Government, for example the Bengal and North Western Railway. The figures for 1933 show a slight increase in the total route mileage which was 42961, while the figures for 1934 show a remarkable increase rising to 46910, which in 1935 rose to 48 021.

Indian Railways are constructed on three gauges. The standard gauge is 5 feet 6 inches and is known as the broad gauge covering almost half of the whole route mileage. This was the first gauge introduced. Later on the metre gauge was introduced which is 3 ft. 3 $\frac{3}{8}$  inches. Then there are narrow gauges which are 2 feet 6 inches or even 2 feet only.

Railways for a very long time did not prove profitable. In the beginning, private companies had to be induced to start railway construction by guaranteeing the payment of interest at 5 per cent on their capital outlay over and above the grant of free land by Government. Contracts

were entered into for 25 years<sup>4</sup> at the end of which the railways were to be sold to Government. Then in 1870 the Government decided to undertake the construction of railways by direct state agency. But this system proved a failure and after a few years the old guarantee system was resorted to with certain modifications. Later on a rebate system was introduced under which certain railways were constructed which offered a rebate on gross earnings but then again the absolute guarantee system had to be adopted together with a rebate. It was only in 1900 that the railways yielded a profit to the state for the first time. After that during some years there has been a gain in others a loss.

The following table will give an idea of the capital outlay on railways and their incomes in rupees.

Year	Total Capital Outlay	Gross earnings	Net earnings	Percentage of net earnings on Capital Outlay
1931-32	8 76 34 32 000	97 26 56 000	28 11 55 000	3 21
1932-33	8 77 85 11 000	96 20 56 000	27 30 94 000	3 11
1933-34	8 84 41 23 000	99 57 65 000	33 32 92 000	3 40
1934-35	8 85 47 32 000	1 02 81 07 000	34 51 65 000	3 64

*Note:* To find out total working expenses we have to deduct the net earnings from the gross earnings.

Among the chief railways in India, The Bengal and North Western Railway shows the highest rate of net

<sup>4</sup> By the end of 1859 contracts had been entered into with eight companies for constructing 5000 miles of railway line.

earning which in 1932 was 9.82 per cent of the capital. Other railways come far behind. For the years 1932, 1933, 1934 the Madras and Southern Maratha Railway shows 6.02, 5.56, 5.49 per cent, the South Indian Railway shows 5.05, 5.34, 4.79 the East Indian Railway shows 4.06, 4.09, 4.49 per cent, while other railways show a still lower percentage, for example the Great Indian Peninsula Railway shows 2.42, 2.47, 2.70 respectively.

Some of the Indian states have also got Railway system. There is the Nizam State Railway which was taken under state management in 1930. Mysore, certain of the Kathiawar states and Rajputana states of Jodhpur and Bikaner and Punjab states of Patiala and others as also the Kashmir state have got their own railways.

It may be noted that the utility of railways is not to be calculated only on the basis of earnings. The railway is a great impetus to trade and commerce, secures strategic positions<sup>1</sup> and is a great gain to the people in times of famine etc.

### THE FEDERAL RAILWAY AUTHORITY

*According to the new Act of 1935 the subject of railway administration has been completely separated from the other subjects of administration. The Act now creates a Federal Railway Authority and the executive authority of the Federation in respect of the regulation, construction, maintenance and operation of railways shall be exercised by this Authority. For guidance the Act says that the Authority shall act on business principles, having due regard "to the interests of agriculture, industry, commerce and the general*

<sup>1</sup> For instance railway construction to connect Quetta and Chaman on the frontier with the main trunk lines through Boln and Harman passes was undertaken only for military purposes and was extremely expensive.

public" In the discharge of their functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government

The Federal Railway authority shall be a body consisting of seven persons to be appointed by the Governor General These persons must be experienced in commerce, industry, agriculture, finance, or administration

For the purposes of finance the Railway Authority shall establish a fund which will be known as the Railway Fund

### THE RAILWAY TRIBUNAL

This Act does not only create a separate executive authority for the Railways, but it also creates a separate judicial authority This authority will be exercised by a Railway Tribunal which will consist of a President and two other persons The President shall be a judge of the Federal Court

From the decisions of the Tribunal an appeal shall lie to the Federal Court on questions of law and the decision of the Federal Court shall be final

### The Department of Industries and Labour

We have noticed the separation of this Department from that of Commerce effected in 1923. Of recent years much attention has been devoted to labour questions by the Government, particularly since the appointment of the Indian Industrial Commission in 1916 and the participation by India in the first International Labour Conference in 1919 at Washington. There is a nominated member in the Legislative Assembly to represent labour.

The activities connected with industries and labour are manifold and have been divided between the central and provincial governments. The Local Governments deal with

factories, welfare of labour and labour disputes. The Central Government deals with labour legislation, inter provincial migration, international labour organisation, copy rights, designs etc., posts and telegraphs, regulation of mines, meteorology, civil aviation and development of industries considered expedient by the Governor General in Council in the public interest. Public works and irrigation are also within the scope of this Department but they are now Provincial subjects.\*

### *The Department of Education, Health and Lands*

This department was constituted in 1923 by the amalgamation of the Department of Education and Health with that of Revenue and Agriculture. Now Education has been made a provincial transferred subject. There are however certain exceptions. Certain Universities like Delhi, Benares, and Aligarh are central subjects, as also are Chiefs' colleges, while education of Europeans is a provincial reserved subject. There is an educational advisor to this Department known as Educational Commissioner. Land Revenue and Agriculture also are now provincial subjects. Public health is also under provincial governments. These will be dealt with under Provincial Administration.

\*Public works originally included Railways also but now they are administered by the Commerce Department under a special form of management (See page 197 above)

## *Provincial Administration*

### *Provinces and Local Governments*

For administrative purposes British India is divided into provinces, each of which has got a separate administrative machinery known as Provincial or Local Government which is more or less in many respects modelled on the lines of the Central Government. Every Local Government is required by the Act to obey the orders of the Governor General in Council and is generally under his superintendence, direction and control in all matters relating to the government of its province. It is also required to keep him constantly and diligently informed of its proceedings and also of all matters about which either he requires information or which in the opinion of the Local Government ought to be reported to him.

The Act also provides that the authority of a Local Government will not be superseded by the presence of the Governor General in its province.

### *Provincial Division*

The provinces into which British India is divided are 15 in number or 16 including Aden whose administration is now divided between the Imperial and Indian Governments. Of these 10 are Governor's provinces and the rest are provinces administered by Chief Commissioners. Governor's

provinces are 1 Madras, 2 Bombay, 3 Bengal, 4 The United Provinces of Agra & Oudh, 5 The Central Provinces, 6 Bihar & Orissa, 7 The Punjab, 8 Assam, 9 Burma (which was placed by the Act of 1919 under a Lieutenant Governor, but was constituted a Governor's province from 2nd January, 1923) and 10 North West Frontier Province<sup>1</sup> The five minor provinces which are governed by Chief Commissioners are 1 Delhi 2 British Baluchistan 3 Coorg, 4 Ajmer Merwara and 5 Andaman and Nikobar Islands Since 1928 Aden has also been made a province under a Chief Commissioner

### THE NEW CHANGES

*The New Government of India Act of 1935 has made some important changes in the provincial divisions According to it the Governor's provinces will be 1 Madras 2 Bombay, 3 Bengal, 4 The United Provinces 5 the Punjab 6 Bihar, 7 the Central provinces and Berar, 8 Assam, 9 the North West Frontier Province, 10 Orissa and 11 Sind So that Orissa and Sind will now be separated from Bihar & Bombay respectively and made separate provinces With the Central Provinces will also be attached Berar which is under the sovereignty of His Exalted Highness the Nizam of Hyderabad Burma will be separated from India*

*Among the minor provinces the most important change is the separation of Aden from India*

### Other kinds of division

In this connection two other kinds of provincial division may also be mentioned, the one is the division into presidencies

<sup>1</sup> The Act of 1919 placed North West Frontier Province under a Chief Commissioner But it has now since 1932 been made a Governor's province But its Governor is also Agent to the Governor-General and is thus directly under him.

and other provinces and the other into Regulation and Non Regulation provinces. The presidencies are three in number i.e. those of Bengal, Madras and Bombay. They are called Presidencies because originally they were each governed by a President and Council. Now however they are governed by governors in the same way as other major provinces. But the distinction is still maintained in name and some differences are still to be found in certain laws affecting the presidency towns, but they are not important for administrative purposes. There is also some difference in the appointment of the Governors of the Presidencies. The Regulation provinces were those of Bengal, Madras, Bombay and Agra, while the rest including Oudh were Non Regulation provinces. The former were governed under regulations<sup>2</sup> passed by the Government, the latter were governed according to simple codes which were modified to suit the special needs of the particular place. This distinction no more holds good and the nomenclature too is not in use, but in practice some sort of difference is observable, particularly in the fact that the district officer known as the collector in the Regulation provinces is called the deputy commissioner in the non Regulation provinces.

#### *Administration of the minor Provinces*

As regards the minor provinces the reforms of 1919 made no change in their administrative system. They are governed by Chief Commissioners who are Agents to the Governor General. Thus these provinces are under the chief control of the Government of India. As we have seen above in the chapter on Central Administration the foreign

<sup>2</sup> The Government of India was not in those days authorised to pass Acts. It could only pass what were known as regulations.

and political department of the Government of India exercises this control

It may be noticed that the North West Frontier Province is under a Governor who is also Agent to the Governor-General. Delhi is governed by a Chief Commissioner. British Baluchistan is governed by the Agent to the Governor-General and Chief Commissioner in Baluchistan. After him comes in rank the Revenue and Judicial Commissioner. Then there are several political agents. Ajmer-Merwara is governed by the Agent to the Governor-General in Rajputana as Chief Commissioner. Coorg is administered by a Chief Commissioner who is the Resident in Mysore. There is also a Legislative Council which has fifteen elected and five nominated members. Aden was formerly administered by the Government of Bombay but now since 1928 the responsibility for administration is apportioned between the Imperial Government and the Government of India, the former being in charge of the military and political situation and of the Aden Protectorate, while the latter is in charge of the Settlement of Aden. It is administered by a Chief Commissioner and Resident who is also the Commander in Chief. The Andaman and Nikobar Islands are administered by a Chief Commissioner.

#### *Administration of the major provinces*

The administration of major provinces is carried on by a Governor who is appointed in the case of presidencies by His Majesty by warrant under the Royal sign Manual, in the case of other provinces by the same authority and in the same manner but after consultation with the Governor-General.

The subjects of administration have now under the Act

been divided into "central" and "provincial" as we have seen above in the Chapter on Central Administration. The provincial subjects are again divided into "Reserved" and "Transferred", the former are administered by the Governor in Council and the latter are administered by the Governor acting with his ministers who are appointed from among the members of the Legislative Council.

The idea behind these reforms was firstly to secure as much autonomy for the Provincial Governments as was practicable under the circumstances, which means limiting the scope of interference by the Central Government or by the Secretary of State. Secondly the idea was to introduce an important measure of responsibility in the provincial administration, which means making the administration conform to the wishes of the people as expressed by a majority of the legislature particularly of the elected members.

With respect to the first, that is provincial autonomy, the Provincial Governments have been given control over many subjects of administration including the important subjects of Land Revenue, Excise and Police etc. Formerly the financial control of the Provincial Governments was very much limited as has been noted in the last chapter<sup>3</sup> but now this control has been largely extended. For general administration it has been laid down that in the matter of Reserved Subjects the Central Government or the Secretary of State should not usually interfere when the Local Government and the Legislature are in agreement and in the matter of transferred subjects this interference should be restricted within the narrowest possible limits.

As regards the second that is introduction of responsibility, a very important step has been taken by transferring

<sup>3</sup> See pages 186-188 above.

certain subjects of administration to substantial popular control inasmuch as they are to be administered by the Governor acting with his ministers and these ministers are elected members of the Legislative Council. In the second place to give effective representation to the people in the legislature it has been provided that a large majority of the members must be elected.

### *The Executive—Diarchy*

The executive administration of provinces has been vested in two authorities, creating thereby a system of dual administration called Diarchy. These two authorities are respectively (1) the Governor in Council meaning thereby the Governor acting with the assistance of the members of his Executive Council and (2) the Governor acting with the ministers. The former administers the reserved subjects and the latter administers the transferred subjects. The Act has provided for making of rules for the transfer of subjects from among the provincial subjects to the administration of the Governor acting with his Ministers, such subjects to be called "Transferred" subjects and also for the allocation of revenues or moneys for the purpose of such administration. The rules made under this provision have prescribed twenty subjects to be administered as transferred subjects. The rest of the provincial subjects are consequently to be administered as reserved subjects. The transferred subjects are Local Self Government, Agriculture, Development of Industries, Education (with certain exceptions), Public works, Public health and Excise etc. The reserved subjects are Revenue, Finance, Law and Justice, and Police etc.

*The Executive Council*

Every Governor has got an Executive Council and the number of the members of this Council cannot exceed four. The actual number<sup>4</sup> for each province is decided by the Secretary of State in Council. The members are appointed by His Majesty by warrant under the Royal Sign Manual and at least one of them must be a person who has served the Government in India at least for twelve years. The Governor *himself is the president of the Council and he appoints its Vice President* from among its members.

The relative powers of the Governor and his Executive Council are much the same as those of the Governor General and his Executive Council. The Governor is bound by the opinion and decision of the majority of the members present at a meeting and in case of equal division he or any other person presiding has a second or casting vote. But the Governor can overrule his Council on his own authority and responsibility if he considers such a measure necessary for the safety, tranquillity or interests of his province or of any part thereof.

For the convenience of administration each member of the Executive Council is given the charge of certain specified subjects or departments of the Reserved Section.

It may be noted that the Governor in Council is still responsible to the Secretary of State and Parliament, though the ministers are responsible to the Legislature.

<sup>4</sup> At present Madras and Bengal have each a Council of four members while Bombay, the United Provinces of Agra and Oudh, the Punjab, Bihar and Orissa, the Central Provinces including Berar, Assam and Burma have each a Council of two members. The North West Frontier Province has got only one Executive Council member.

*The Ministers*

The ministers are appointed by the Governor<sup>5</sup> and they hold office during his pleasure. But they must be appointed either from among the elected members of the Legislative Council or within six months of their appointment must become such members, otherwise they would cease to hold office. No member of the Executive Council or any other official can be appointed a minister.

The number of ministers varies from province<sup>6</sup> to province. The ministers advise the Governor, who is guided by such advice, unless he sees sufficient cause to disagree. Ministers are responsible to the Local Legislature and should usually be such members of the Legislative Council as command a majority of votes in the House.

*Council Secretaries*

For the assistance of the members of the Executive Council and also of the ministers the Governor can appoint Council Secretaries. These secretaries hold office during the Governor's pleasure but they must be non-official members of the Legislature and a secretary cannot hold office for more than six months if he is not such a member.

<sup>5</sup> It is important to note that in the Province of Madras and there only the Governor calls upon the leader of the majority party in the Legislative Council to select his colleague and form a ministry. This is a practice which secures more effective popular control of the administration and also creates greater sense of responsibility than the practice prevailing in other provinces. This practice obtains in England also.

<sup>6</sup> Madras, Bengal and the Punjab have each got three ministers, while Bombay, the United Provinces of Agra and Oudh, Bihar and Orissa, the Central Provinces including Berar and Assam have each got two. The North West Frontier Province has got only one minister.

## THE EXECUTIVE UNDER THE NEW ACT

The new Act of 1935 has made important changes in the present provincial administration. As in the case of the Central Government so in the case of the Provincial Government a distinction has been drawn between those functions of the Governor which he is required to exercise in his discretion and his other functions. As regards the former he will be under the general control of the Governor-General and shall comply with such particular directions as he may give from time to time. His Majesty may also issue instruments of instructions to a Governor. The draft of such an instrument will be laid before Parliament by the Secretary of State.

As regards other functions the Governor will be aided and assisted in their exercise by a Council of Ministers. These ministers will be chosen and summoned by the Governor and shall hold office during his pleasure. But a minister cannot remain in office if for a period of six consecutive sittings he is not a member of the Provincial Legislature.

This Act therefore abolishes the system of diarchy introduced by the Act of 1919 and the Governor will now have no Executive Council.

But the Governor is authorised to preside in his discretion at meetings of the Council of Ministers.

This Act has also fixed the salaries of the Provincial Governors which are as follows —

The Governors of Madras, Bombay, Bengal and the United Provinces will each get an annual salary of Rs. 1,00,000, the Governors of the Punjab and Bihar will each get Rs. 1,00,000, the Governor of the Central Provinces and Berar will get Rs. 72,000 and the Governors of Assam, North West Frontier Province, Orissa and Sindh will each get Rs. 66,000.

## SPECIAL RESPONSIBILITIES OF THE GOVERNOR

*Like the Governor General the Governor also has certain special responsibilities. These are, for instance,*

(a) *the prevention of any grave menace to the peace or tranquillity of the province or of any part of it*

(b) *the safeguarding of the legitimate interests of minorities,*

(c) *with respect to those who are or have been members of the public services and to their dependants, the safeguarding of their legitimate interests and the securing to them of any rights provided or preserved for them by or under the Act,*

(d) *the protection of the rights of any Indian State and the rights and dignity of its Ruler*

*In those cases in which any special responsibility is involved the Governor is directed to exercise his individual judgment as to the action to be taken in so far as such responsibility is involved*

*So that all these cases are excluded from the scope of the Council of Ministers*

*The Secretariate*

Public business in the Provincial Government is transacted through the Secretariate which is divided into a number of departments, each in charge of a Secretary who is responsible to a member of the Executive Council or to a minister according to his department. The number of secretaries is also different in different provinces. Among the secretaries there is one Chief Secretary. In various provinces the secretaries hold charge of various departments, for example, in Bombay there is one secretary for each of the following departments —(1) Home and Ecclesiastical, (2) Political, (3) Finance, (4) Revenue (5) Legal, (6) Public works, (7) General and Educational. In the United Provinces the

Revenue Secretary looks after the Revenue, Ecclesiastical and Forest departments and also a section of the Public Works Department and the education secretary is in charge of the Education, Industries and Excise departments. The finance secretary is in charge of the Finance Department but in Assam there is only one Secretary for finance and revenue departments, and so on.

Under the Secretaries there are a number of Deputy Secretaries and Under Secretaries or Assistant Secretaries and members of the subordinate and clerical staff.

### *Divisions and Districts*

For purposes of administration each province is divided into smaller units known as districts. It is the district which under the present system is the unit of administration. The executive head of a district is variously known as the District Officer, the Collector or the Deputy Commissioner. The last term is used only in Non Regulation provinces. He is also the District Magistrate.

Between the districts and the provinces there are what are called divisions.\* A division contains many districts and is placed in charge of a Commissioner.

Divisions vary in number, area and population from province to province. While the United Provinces of Agra and Oudh have got ten divisions having an average area of about ten thousand square miles and an average population of about 5 million, in Bombay there are only four divisions and in Bengal and the Punjab there are five each.

The districts also vary in number and size. While the United Provinces of Agra and Oudh have got 48 districts having an average area of over two thousand square miles

\*In Madras, however, divisions do not exist.

and an average population of a million, Madras has got only 22 districts

Districts are further divided into smaller divisions known as Tahsils in the northern provinces and Talukas in the Southern. Tahsil is further divided into parganas. The ultimate unit both of society and of administration throughout the whole of India is the village.

### *The Powers of the Commissioner*

The Commissioners have a general power of supervision over the districts in their charge. They are immediate superiors of the collectors in matters of land and revenue. Their main duties are concerned with the collection of revenue and management of land. They are also courts of appeal in revenue and rent cases. But apart from that they have no judicial powers. They exercise some sort of control over the *Municipalities and District Boards* also. The Commissioner of Sind<sup>3</sup> alone among the Commissioners exercises a wide authority and performs important executive functions.

### *The District Officers, their powers and duties*

The head of the district administration is the District Officer who has got very wide powers. As has been said above the district is the unit of administration. The District Officer is responsible for the general administration of his district. He is responsible to the Local Government. But within his jurisdiction he is very powerful. He has not merely to carry out orders or look to the details of administration, but has to look after the general peace of the district.

<sup>3</sup> Now Sind will become a Governor's province under the new Act of 1935.

and has very often to depend upon his own initiative. His responsibilities are certainly great.

In practice the District Officer is the connecting link between the Government and the people. He is generally accessible to all residents of his district and usually fixes time to see members of the public who like to see him. He is in intimate touch with his people and for facility of intercourse and with a view to acquire a first hand knowledge of their life he makes tours in his district usually in winter. He is really well informed about the life of his district, the grievances of his people and the general condition of the place. He also intimately knows how the administration is carried on in actual practice and how the people like or dislike it. He is the best official to inform the Government of the conditions of the people at large and their views and opinions and he has to submit an annual report of the general administration and condition of his district, giving his opinion about the general state of affairs and making necessary suggestions.

Apart from his general duties and responsibilities the District Officer has in particular twofold duties. As observed above he is both the Collector and District Magistrate.<sup>\*</sup> As Collector he is in charge of the collection of revenue both

<sup>\*</sup>It is important to note that this combination of executive and magisterial functions in one particular person has roused much criticism from various classes of people. Both according to administrative theory and with a view to check arbitrariness it is desirable that the executive and judicial functions should be separately exercised by different persons. But the Government in India has found it expedient to invest the executive with some judicial powers. It must be remembered that the executive as represented by the Collector and his assistants has only a limited judicial power. It has got only criminal jurisdiction and that too of a limited nature inasmuch as it cannot try sessions cases. Moreover in this respect the district executive is subordinate to the judiciary i.e. the Sessions Judge and the High Court, and not to any executive or revenue authority. The executive has absolutely no civil jurisdiction.

from land and other sources. He maintains records and registers of land and revenue and of rights in land. He also hears rent and revenue cases, particularly appeals, and in this matter his decisions are subject to the appellate jurisdiction of the Commissioner and in certain cases to that of the District Judge.

As a magistrate he has to discharge magisterial duties, having criminal jurisdiction except in certain cases which are triable only by a court of sessions. Ordinarily the District Magistrate's Court is an appellate court from the decisions of 2nd and 3rd class magistrates. His immediate superior in this respect is the District Judge.

Besides these powers and duties, the District Officer is also the head of the Court of Wards and is in charge of Government estates which he usually manages through a special manager.

As the officer in charge of the general administration he has to look after the administration of the various departments not directly under his charge and important matters connected with any department are brought to his notice. As a matter of fact he supervises all work done in his district. The departments of police, jails and prisons, public health and sanitation, medical relief, education etc. all come under his purview. The heads of all these departments usually reside at the headquarters where the District Officer resides, and though they are directly subordinate to officers of their respective departments, the District Officer has general supervision over their work.

It may still be remembered that these are but the important powers and duties of the District Officer which by no means constitute an exhaustive list. All the work which the Central or the Local Government has to get done in a district

is done by or through the District Officer, e.g. election, census, survey, famine relief, etc. etc

### *Subordinate District Officials*

Below the Collector are Assistant Collectors and Deputy Collectors. They are also magistrates. As courts they try revenue and criminal cases and have got ordinary original jurisdiction. Most of them are also the executive heads of the sub-divisions of a District. In the northern provinces they usually hold charge each of one tahsil and in southern provinces of three or four talukas. Below them in rank are the tahsildars in northern provinces, each in charge of a tahsil and Mamlatdars in southern provinces each in charge of a taluka. These officers are also subordinate magistrates and exercise some criminal jurisdiction in minor cases. A tahsil is again sub-divided into parganas, but these are important only for settlement of revenue and have no separate officers for them. The tahsildar has under him naib-tahsildars and Qanungos. At the bottom come the village officials. In the northern provinces they are the mukhia, the patwari and the chaukidar, while in the southern they are the patel, the talati or kulkarni and the watchman. The mukhia or the headman corresponds to the patel. His powers are different in different provinces. While in some places he only informs the authorities about offences etc., in others he collects the revenue and in some he has also to maintain peace and order. The talati or Kulkarni corresponds to the patwari. His duties include the keeping of village records of land, revenue and rent. For administrative purposes he is an important official and has to do miscellaneous work of clerkship, writing statistics or reports as required by higher authorities. The watchman or chaukidar has

police duties and keeps watch over the area in his charge. He informs the higher police authorities of crimes, offences and suspicious characters and also keeps records of births and deaths.

### *The Provincial Legislature*

Originally the provinces i.e. the three presidencies of Bengal, Bombay and Madras could legislate for themselves individually, the Governor in Council of each having the power to make rules and regulations. But in 1833 the Provinces of Bombay and Madras, were deprived of this power, the whole power being vested in the Governor-General<sup>10</sup> in Council and later on in the Governor-General in Council with some additional members representing the provinces<sup>11</sup>. This system however was found unworkable and the Councils' Act of 1861 introduced important changes. It gave back to the provinces of Bombay and Madras their legislative authority, created a separate legislature for the province of Bengal and made provision for separate legislature for other provinces<sup>12</sup>. At the same time the provincial councils were enlarged by the addition of certain nominated non official members. But the scope of these councils was much restricted. Apart from their being subject to the general supervision of the Central Government, it was provided that without the consent of the Governor General they could not make or consider any law affecting certain specified subjects, which were the public

<sup>10</sup> In 1833 the Governor General became known as Governor General of India.

<sup>11</sup> That is of Bombay and Madras and the then recently constituted province of Agra.

<sup>12</sup> In the United Provinces the Legislative Council was established in 1886, in the Punjab in 1897 and so on.

debt or finances of the Central Government, maintenance and discipline of army and navy, Penal Code, Currency, Post and Telegraph. Then again any bill passed by them could become law only when it received the assent of the Governor-General. Moreover, without the previous submission to and approval of the Central Government the Provincial Governments could not introduce any bill before the Council. The Act of 1892 made further important changes. In the first place it increased the number of additional members fixing a maximum of 20 for Madras and Bombay and of 15 for other provinces, at the same time providing that in Madras and Bombay at least one half and in other provinces at least one-third of the additional members must be non officials. In the second place it provided for the representation of certain interests. Though it retained the system of nomination it was intended to give a representative character to the members and to secure a fair representation of the different classes of the community. Thus certain members were nominated on the recommendation of the Municipal Boards, the District Boards, the Universities, the landholders, the merchants etc. The Act of 1909 provided that the official majority in all the provinces could be dispensed with. This Act made provision for election side by side with nomination and introduced for the first time the principle of communal representation, empowering Mohammedans to return their own separate representatives. The Act also granted certain restricted powers of asking questions and moving resolutions.

Thus we find that the powers of the Provincial Councils were very much limited before the Act of 1919 was passed. First of all there was an important restriction as regards the subjects falling within their scope. Secondly, every bill

introduced by the Provincial Government had previously to be submitted and approved of by the Central Government. Thirdly, when a bill was passed by the Council it had to receive the assent not only of the head of the administration (e.g. the Governor) but also of the Governor-General and of the Secretary of State. Fourthly, as regards other powers, like control over the executive, right to ask questions or move resolutions, the Provincial Councils had very little authority.

The Act of 1919 introduced very important changes. On the one hand it provided for the relaxation of control by the Government of India, on the other it increased the powers of the council securing some sort of limited control by the people over the administration. Again it increased the electorate and also the members, particularly the elected members. At the same time the system of direct election<sup>13</sup> was adopted. It also extended the principle of communal representation and the representation of various interests.

### *The Legislative Council*

Every Governor's Province has got a Legislative Council, consisting of the members of the Executive Council of the province and of nominated and elected members. The Act prescribed the number of these members but provided that this number could be increased for any Council.

The following table gives the prescribed and the present number of members for each province.

<sup>13</sup> See pag. 155 note above

	Province	Prescribed number	Present number
1	Bengal	125	139
2	Madras	118	127
3	United Provinces	118	123
4	Bombay	111	111
5	Bihar & Orissa	98	103
6	Punjab	83	93
7	Central Provinces	70	68
8	Assam	53	53

So that the number has increased in all the provinces except in Bombay and Assam where it is the same and in Central Provinces where it is reduced. Burma which was made a governor's province after the Act<sup>14</sup> has now 101 members in its Council. The North West Frontier Province which also is now a governor's province has 40 members in its Council.

The Governor cannot be a member of the council but he can address it and for that purpose can require the attendance of its members. For adequate representation of the people and also as a step towards introducing responsibility in the provincial administration the Act laid down that at least seventy per cent of the members of each council must be elected and not more than twenty per cent could be officials.

#### *Duration, Sessions and Presidentship of the Council*

The duration of a Governor's Legislative Council is 3 years<sup>15</sup> from its first meeting. But the Governor has the

<sup>14</sup> See page 204 above

<sup>15</sup> Compare the duration of the Legislative Assembly which is also three years and of the Council of State which is five years.

right to dissolve it sooner or extend it for a maximum period of 1 year. The Governor appoints the place and time of holding the sessions and has the power of proroguing the Council.

Questions at a meeting are determined by a majority of votes of the members present. But the person presiding has not got the ordinary vote and can only exercise a casting vote in case of an equality of votes.

Every Governor's Council has a President and a Deputy President, who are paid. The first president was appointed by the Governor but subsequent presidents and all deputy presidents are elected by the Council from among its members and approved by the Governor. An appointed president could be removed by order of the Governor but elected presidents as well as deputy presidents can be removed from office by a vote of the Council with the concurrence of the Governor. They also cease to hold office when they cease to be members of the Council.

### *Powers of the Governor's Legislative Council*

The powers of the Legislative Council may be classed under three heads. The first and the chief is the legislative power for which a legislature primarily exists. The second is the power over the finances and the third is the general control and supervision over the executive.

### *Legislative power*

As regards the first, that is, the powers of the Provincial Legislative Councils to legislate, the Act empowered the Councils to "make laws for the peace and good government" of the respective provinces subject to certain restrictions. At the same time it also empowered them to repeal

or alter, as to their respective provinces, any law made before or after the Act by any authority in British India other than the local legislature concerned

The restrictions imposed on the provincial legislature in matter of legislation are important, chief among them being the following —

(1) A provincial legislature cannot make any law affecting any Act of Parliament (2) It cannot without the previous sanction of the Governor General alter or repeal certain specified provisions of Law (3) It cannot without the previous sanction of the Governor General make or consider any law (a) regulating a central subject or a provincial subject declared to be subject to legislation by the Indian Legislature, (b) affecting the foreign relations of the Government including relations with Indian states, (c) affecting the discipline or maintenance of his Majesty's military, naval or air forces, (d) imposing or authorizing imposition of a new tax except when a tax may be exempted from this provision, and (e) affecting the public debt of India, customs, or any other tax or duty imposed by the Governor General in Council for the general purposes of the Government of India

### *Procedure for making laws*

First of all permission is granted to introduce a Bill which is then introduced before the Council. When the Council finally<sup>18</sup> passes it, it is submitted to the head of the Province (the Governor or the Chief Commissioner as the case may be) for his assent. If he does not give his assent to the Bill the matter ends there and the Bill cannot become an Act. If he does not refuse his assent, any of three courses may be

<sup>18</sup> A Bill has three readings before it is regarded as finally passed

adopted. Firstly, he can return the Bill to the Council for reconsideration. Secondly, in certain cases he can and in certain he must reserve the bill for the consideration of the Governor General. Thirdly, he can give his assent to it. In the second case if the Governor General gives his assent within six months the Bill becomes law, but if he does not do so it ends there and is of no effect. In the third case, that is, when the head of the Province gives his assent to it it becomes an Act and he must send forthwith an authenticated copy of it to the Governor General. The Governor General on his part may either (i) refuse his assent giving reasons for that, in which case the Act has no validity, or (ii) reserve the Act for the signification of His Majesty's pleasure thereon, in which case it can become valid only when His Majesty in Council has signified his assent and that has been notified by the Governor General, or (iii) give his assent in which case it becomes law after signification of that assent and its publication. In this case however the Governor General must send to the Secretary of State an authentic copy of the Act and His Majesty in Council may signify his disallowance of the Act in which case the Act will become void.

Thus we find that apart from the restrictions mentioned above the provincial councils are subject to great control by the head of the Province, the Governor General and His Majesty in Council. Apart from the previous sanction of the Governor General for legislation concerning many important subjects noted above, no Act of the local legislature can have validity unless he gives his subsequent assent also.

### *Special powers of the Governor with regard to legislation*

Like the Governor General at the centre the Governor

also in his province enjoys certain special powers with regard to legislation. In the first place, he has under certain circumstances the power to make an Act on his own responsibility. But this power extends only to the reserved subjects and not to the transferred ones. In case a Governor's Legislative Council has refused leave to introduce or has failed to pass a Bill in a form recommended by the Governor, if he certifies that "the passage of the Bill is essential for the discharge of his responsibility", the Bill will become an Act of the local Legislature on his signature. Such Acts are expressed to be made by the Governor. An authentic copy of every such Act must be sent to the Governor General who reserves it for the signification of His Majesty's pleasure thereon and it will have the force of law after the signification of the assent of His Majesty in Council and notification thereof. But the Governor General has the right in cases of emergency to signify his own assent to the Act instead of reserving it and thereupon it will have the force of law, subject however to disallowance by His Majesty in Council.

Acts made under the exercise of this special power must be laid before each House of Parliament.

In the second place, if a Bill has already been introduced or is proposed to be introduced or an amendment to a Bill is moved or is proposed to be moved the Governor has the power to stop all proceedings or all further proceedings with regard to that Bill, any clause or amendment, if he certifies that the Bill or clause or amendment affects the safety or tranquillity of his province or any part of it or of another province.

It may be noted that a Governor has not the power to issue ordinances. But in case of regulations made by the Governor General the draft is submitted by the Local Govern-

ments <sup>17</sup>

### *Control over Finance*

As regards control over finance the local legislatures enjoy certain powers under the Act but they are of a limited nature and the Governor is still the chief controlling authority. Every year the estimated annual expenditure and revenue of the province, that is, the provincial budget is laid before the Council in the form of a statement, and the proposals of the provincial Government for the appropriation of revenues and other moneys are submitted to the vote of the Council in the form of demands for grants as it is done in the case of the Legislative Assembly at the centre. It is within the power of the Council to assent to or refuse such a demand or reduce its amount.

But the exercise of this power has many important restrictions attached to it particularly with regard to the reserved subjects.

In the first place, no member of a council can introduce without the previous sanction of the head of the province any measure affecting the public revenues of that province or imposing any charge on them. In the second place, no proposal for appropriation of revenues or other moneys for any purpose can be made except on the recommendation of the Governor. In the third place, proposals relating to certain specified heads of expenditure are not required to be submitted to the Council. These heads include provincial contributions to the Central Government (which have now however been completely remitted), interest and sinking fund charges on loans, expenditure whose amount is prescribed by or under any law, salaries, pensions, allowances,

<sup>1</sup> See page 169 above

gratuities etc. of almost all the higher officials

Apart from these restrictions there is the provision that even in case a demand is put to the vote and the Council refuses it or reduces its amount, the Governor has the power to ignore the refusal or reduction if he certifies that the expenditure is "essential to the discharge of his responsibility" But this provision applies only to the reserved subjects and not to the transferred ones

Over and above all this the Governor has the power in cases of emergency to authorise any expenditure which he considers "necessary for the safety or tranquillity of the province, or for carrying on of any department"

#### *General Powers of the Council*

The power of control or supervision of the executive is still possessed in a very little degree by the legislature. As regards the reserved subjects the Government is not at all responsible to the legislature and may conform to its wishes only if it chooses to do so. But when the Council and the Government are in agreement the higher authorities seldom intervene. As regards the transferred subjects, however, the ministers are responsible to the legislature and cannot retain office for longer than six months if they are not elected members of the Council. But even here the financial control being largely in the hands of the Executive, the Council can exercise only a limited control. Here if the Council and the Government agree, the higher authorities' intervention is restricted within the narrowest possible limits. As a matter of fact the parliamentary practice of taking the leader of the majority party in the Council at the head of the ministry and allowing him to choose his colleagues does not obtain anywhere except in Madras. In this

respect and practically in all matters connected with responsible administration much depends upon the conventions established during the course of time, as is so clearly the case with the English constitution, in which conventions play a very important part<sup>18</sup>

An important class of powers enjoyed by the councils is concerned with the asking of questions and moving resolutions. By this means members can criticize the administration and require under certain circumstances an explanation of government measures. An important provision as regards the general rights of members is their freedom of speech. Subject to the rule and standing orders they are free to express their opinion and cast their vote.

#### PROVINCIAL LEGISLATURE UNDER THE NEW ACT

*According to the New Act of 1935 the provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam will each have a bicameral legislature: i.e. they will have two chambers of the legislature to be known respectively as the Legislative Council and the Legislative Assembly. In other provinces there will be only one chamber known as the Legislative Assembly. A Legislative Council shall be a permanent body but as near as may be one third of its members shall retire in every third year. A Legislative Assembly shall continue for five years unless dissolved sooner. The Assembly shall choose from among its members a Speaker and a Deputy Speaker. In the case of the Legislative Council they will be called President and Deputy President. The members of the Chambers shall be entitled to such salaries and allowances as may be determined from time to time by Act of the Provincial Legislature. The subjects regarding which provincial legislatures may legislate have been given*

<sup>18</sup> See page 114 above

in a schedule appended to the Act which has been referred to above in the chapter on Central Government (See p. 178 *supra*).

### LEGISLATIVE PROCEDURE

Except with respect to financial Bills for which special procedure is laid down imposing important restrictions on the legislature, a Bill may originate in either Chamber of a Legislature which is bicameral but it will not be deemed to have been passed unless agreed to by both Chambers.

After its passage through the Legislature a Bill is presented to the Governor who (a) may refuse to assent to it in which case the Bill ends there or (b) may give his assent in His Majesty's name in which case it becomes an Act or (c) may reserve it for the consideration of the Governor General in which case the Governor General may either give his assent or refuse it or reserve it for the signification of His Majesty's pleasure thereon in which case it cannot become an Act unless and until within twelve months of the presentation to the Governor he gives his assent or types that His Majesty has assented to it or direct the Governor to return it to the Chamber or Chambers as the case may be for reconsideration or (d) return it to the Chamber or Chambers for reconsideration in which case the Chamber or Chambers as the case may be shall reconsider it. In the case of Bills assented to by the Governor or the Governor General His Majesty may disallow any such Act (as the Bill will not be called) within twelve months from the date of the assent.

### LEGISLATIVE POWERS OF THE GOVERNOR

The new Act confers on the Governor certain very important legislative powers not so far enjoyed by him. These powers are very much similar to the like powers of the Governor General subject to certain control by the Governor General. Now the Governor also can pass Acts, when necessary for discharging his functions, to be

*called Governor's Acts but only with the concurrence of the Governor-General. He can also promulgate ordinances which (a) so far as the functions to be exercised in his discretion are concerned can have effect for a maximum period of six months, but such ordinances can be passed only with the concurrence of the Governor-General, and (b) so far as other functions are concerned can be passed only when the legislature is not in session and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or earlier if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any*

#### CONSTITUTION OF THE CHAMBERS

*The following tables show the seats of the two Chambers respectively and also indicate the distribution of these seats*

## Legislative Council

1	2	3	4	5	6	7	8	
Province	Total of seats	General seats	Muhammadan seats	European seats	Indian Christian seats	Seats to be filled by Legislative Assembly	Seats to be filled by Governor	
	min	max					min	max
1 Bengal	63	65	10	17	3	27	6	8
2 United Provinces	58	60	34	17	1		6	8
3 Madras	54	56	35	7	1	3	8	10
4 Bombay	29	30	20	5	1		3	4
5 Bihar	29	0	9	4	1	12	3	4
6 Assam	21	22	10	6	2		3	4

Note The last two columns are specially noteworthy. In all the provinces the Governor will fill a number of seats by his own nominees. In Bengal and Bihar the members of the Legislative Assembly will elect a considerable number of members.

## Legislative Assembly

Province	Total seats	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
			Total of general seats	General seats reserved for Scheduled castes	Seats for representatives of backward areas and tribes	Sikh seats	Muhammadan seats	Anglo Indian seats	European seats	Indian Christian seats	Seats for representatives of commerce, industry, mining and planting	Seats for representatives of labour	Landholders' seats	University seats	General	Sikh	Muhammadan	Anglo Indian	Indian Christian
1 Bengal	230		78	30			117	3	11	2	19	8	3	2	2				
2. United Provinces	228		140	20			64	1	2	2	3	2	6	1	4		2	1	
3. Madras	215		146	30	1		28	2	3	8	6	2	6	1	6		1		
4 Bombay	175		114	15	1		29	2	3	3	7	7	2	1	5		1		
5 Punjab	175		42	8		31	84	1	1	2	1	3	5	1	1	1	2		1

6	Bihar	112	86	15	7	39	1	2	1	4	3	4	1	3	1
7	Central Provinces & Berar	112	84	20	1	14	1	1	2	2	2	3	1	3	
8	Assam	108	47	7	9	34	1	1	11	1	4		1	1	
9	Orissa	60	44	6	5	4	1	1	1	1	1	2		2	
10	Sind	60	18			33	2		2	1	1	2		1	
11	North west Frontier Province	50	9									2			

There is further reservation in Bombay where of the general seats 7 shall be reserved for Marathas and in the Punjab where one of the Landholders seats shall be filled by a Tumandar. This table is remarkable for the vast increase in the number of members and for the detailed provision for representation of various classes, communities and interests. Even in the case of women's seats there is communal representation except in a few provinces. In Assam and Orissa the seats reserved for women shall be non communal seats. The representation of women is a marked feature of this table and has been introduced by this Act.

*Franchise and Qualifications of Members and Electors*

The question of franchise and qualifications of members and electors has been dealt with earlier in connection with central legislature. The noteworthy points particularly for provincial councils are the following —

1. The size of the electorate has been increased. Still only a very small percentage of the Indian population is entitled to vote, the total number of voters made in accordance with the first franchise rules was only about fifty lakhs of the adult male population. *This will be very much increased now in virtue of the provisions of the new Act of 1931.* As regards woman franchise local Legislative Councils have the power to place women on the electoral roll. The Madras Legislative Council was the first in British India<sup>19</sup> to grant franchise to its women. Later on Bombay, Bengal, the United Provinces, the Punjab, the Central Provinces, Burma, Bihar and Orissa also enfranchised their women. It may be noted that the United Provinces Legislative Council in 1923 recorded a unanimous vote in favour of woman suffrage, which was a world suffrage record. Women have also been allowed to take their seats as members in the Councils. The first woman member was Dr (Mrs) Muthu Lakshmi Reddi<sup>20</sup> of the Madras Legislative Council. Madras took the lead in 1926 followed by Bombay and the Punjab. The Central Provinces and the United Provinces have also each a nominated woman member of their respective Council. Though women have been granted the franchise the total

<sup>19</sup> The first in India was the Legislative Council of Travancore which granted franchise to its women in 1920.

<sup>20</sup> She was nominated a member in 1927 and was honoured by being elected the Deputy President of the Council by a unanimous vote.

number of women voters is less than even ten lakhs

*This will however be very much increased in view of the new Act*

There are special arrangements made for the polling of the votes of women having regard to the parda system and shyness of the Indian women

2 Constituencies have been so formed as to give separate representation to various elements of the population, for example, to different communities, to different local bodies and to special interests. Ordinarily the constituencies are territorial i.e. the residents of a particular area possessing the prescribed qualifications are voters for the election of a particular member or members. In case of rural areas the constituencies coincide with the civil districts and for urban areas a group of adjacent municipal towns form a constituency. Sometimes a large town is a constituency itself and sometimes a larger town contains a number of constituencies for example Calcutta has eight constituencies. *Now however the number of the constituencies has been vastly increased and their areas reduced in view of the new Act*. There are also certain non territorial constituencies formed to give representation to special interests e.g. Commerce, University, Mining etc.

3 Qualifications both for voters and members vary in detail in different provinces but generally they are based on property or education i.e. a person who possesses property of a particular value, which is measured by the amount of revenue or income tax or municipal taxes that he pays, or again a person who is a graduate of seven years' standing has a right of vote. Retired officers and members of the regular army have also a right of vote. In territorial constituencies residence within the limited area of the consti-

tuency is a necessary qualification for a voter but not for a member who should however have residence anywhere in the province<sup>21</sup> Officials cannot be elected as members. A person cannot be a member of more than one legislature. A voter must not be under 21 and a candidate must not be under 25 years of age. Unsoundness of mind and certain crimes are disqualification for both. Again both must ordinarily be British subjects. One voter cannot vote in more than one general constituency<sup>22</sup>. An undischarged insolvent cannot be a member.

*The New Act has widened the electorate. It has reduced the minimum required as voter's qualifications both as regards property qualifications as well as educational qualifications. Apart from this it has completely abolished the sex disqualification and has given to the women full rights of voting and also of being represented in the various legislative bodies. More than that it has reserved certain seats for them in most of such bodies.*

4. A system of direct election has been adopted, i.e. members are elected not by persons elected in their turn by others, but by primary electors themselves. Previously people elected members for the local bodies and they in their turn elected members for the Councils, such a system of election is known as indirect.

#### *Legislative Councils of Lieutenant Governors and Chief Commissioners*

At present there is no province under a Lieutenant Governor.

<sup>21</sup> Certain provinces as Bombay, the Central Provinces, and the Punjab however require the residential qualification for the candidates.

<sup>22</sup> See above page 162. However a voter voting in one general constituency can also vote in a special constituency. General constituencies are based on racial distinctions while special constituencies are based on special interests e.g., Commerce, University etc.

nor. However, when the Act of 1919 was passed Burma was under a Lieutenant Governor and a new Lieutenant Governorship could be constituted under the Act. *But under the New Act of 1935 there is no provision for Lieutenant Governorship.* According to the provisions of the Act of 1919 Provinces under Lieutenant Governors and Chief Commissioners also have Legislative Councils consisting of nominated and elected members and of the members of the Executive Councils where there is any. It has been provided that one third of the nominated and elected members must be non-officials. Members of the Legislative Council of a Lieutenant Governor cannot exceed one hundred. These Councils have little or no power over the finances of their province. Only under certain conditions can they even discuss the annual financial statement of the local Government. They have not the right to vote supplies. The right of members to ask questions is also very much restricted. As regards legislation their powers and restrictions are the same as those of the Legislative Councils of the Governor's provinces. The Lieutenant Governor or the Chief Commissioner is the President of his Legislative Council, while as we have seen above the Governors are not. Again a Lieutenant Governor who has no Executive Council or a Chief Commissioner appoints the Deputy President of his Council.

*According to the New Act of 1935 there is no province under a Lieutenant Governor. For provinces under a Chief Commissioner there is no provision for a Legislature except for Coorg where the present arrangements will continue until other provision is made by His Majesty in Council. For other provinces the Governor General may in his discretion make Regulations for the peace and good government of the territories. They will have the effect of an Act of the Federal Legislature and can be disallowed by His Majesty.*

*The Judiciary*

Administration of justice including maintenance of law and order is one of the primary functions of the state and is one of the main objects justifying the existence of a Government. In India particularly it has been regarded as the chief duty of the King and from times immemorial kings have taken special troubles to do justice even at a great inconvenience or loss to themselves. Even so late as the Mughals we find that the Emperors devoted special days and special times to do justice<sup>23</sup>. As a matter of fact it is upon this aspect of administration that the stability of a Government largely depends and one of the most important causes of the stability of the British Government in India is the popular belief in its impartial and efficient administration of justice.

In dealing with this subject we have to consider many aspects. Without going into details or involving ourselves into the technicalities of law and jurisprudence we have to understand firstly the nature of justice administered and the broad principles underlying its administration, secondly the law applied, thirdly the mode of judicial administration, and lastly the machinery which administers justice.

*Nature of justice administered*

Justice is administered in accordance with law, that is, there is a definite body of law according to which justice is done and nobody can act arbitrarily in his exercise of powers as regards administration of justice. All courts and officers are bound by the law and they cannot go astray an inch

<sup>23</sup> Particularly Jahangir and Shahjahan.

To understand it clearly we can put it in a negative form showing what is not the nature of justice administered by the courts. Justice is not administered according to (i) the personal likes or dislikes or whims of a particular officer or officers, (ii) the rules and principles laid down in the scriptures,<sup>24</sup> (iii) the moral or ethical code of a particular class of people and so on.

This is one broad principle underlying the administration of justice. There are certain other principles which are very important and must be grasped before we can understand the general system. As regards civil justice it is mainly an affair between the parties and is administered on the basis of securing and preserving rights and non interference with lawful possession, so that people may feel that they are secure in their rights and possessions and can safely and freely enjoy their income and property. In the next place they are free to adapt their lives according to their views, unless they interfere with the rights of others or act unlawfully. There is full religious toleration and no one is molested on account of his religious beliefs or practices. Then again the Government can also be liable for wrongs done to private persons. Government sues or is sued in the name of the Secretary of State. Now, however, as far as the provisions of the New Act of 1935 the Federal Government may sue or be sued by the name of the Federal Government of Iraq and a Provincial Government by the name of the Province. As regards criminal justice it may be noted that offences are regarded as offences against the

<sup>24</sup> In administering justice particularly civil justice in the matter of marriage, succession etc. regard is paid to the religious beliefs and practices, customs and ethics of the parties concerned but even then all these are taken into account only in so far as they have been incorporated into the law, and justice is not administered according to them but according to law as embodying them.

Crown and the Government itself is a party in such cases and sees that the offender is properly punished. All are equal before the eye of the law which recognises no position or rank in bringing the offender to take his trial. There is some distinction maintained in matters of procedure<sup>23</sup> but as far as the substantial criminal law is concerned no such distinction is made.

Then there is the important question of punishment. What after all is or should be the aim of punishment? There are various theories with regard to that. Writers on jurisprudence like Salmond and Gray and on politics like Bosanquet and others have dealt with the subject at length but here we may instead of going into their theories look at the practical aspect and see how punishment is actually awarded by the existing courts. Three or four points may be noted in this connection. Punishments are not in any sense vindictive, that is, meted out in a spirit of revenge. This would have been the case if the wronged party were allowed to inflict the same wrong on the wrong doer. However, in certain cases compensation is awarded to the wronged party by sentencing the culprit to a fine and paying a part of it to the wronged party. As a matter of fact the Government itself sees that offences are punished irrespective of the wishes or efforts of the wronged party and in most cases parties cannot compromise even if they choose to do so. Punishments serve as a warning to others to refrain from doing criminal acts. In this respect they are deterrent or preventive, tending to prevent similar offences being committed. They are also preventive in the sense that confinement of criminals in a prison physically prevents them from repeating

<sup>23</sup> For example Europeans are tried in accordance with a slightly different procedure.

offences. Again they are intended to give a lesson, making the culprit once punished afraid of committing offences again. But in practice this aspect of the question has not shown much success and offenders have often become hardened after serving out their sentence. Another aspect is that of reform. Punishments are also a means of enabling the offenders to live a better life. For this purpose prisoners are taught some trade and young offenders are placed in reformatory schools<sup>26</sup>

### *The Law applied*

The law which the courts apply in the administration of justice is derived from various sources. In certain matters, for example, marriage, succession<sup>27</sup>, divorce, adoption, legitimacy etc. the law of the parties as derived from their religious scriptures or ethical codes or even custom is applied. In other matters the Legislature has made enactments. For criminal law there are complete codes enacted by the legislature. Where the Indian law is silent the practice of English law is followed. It may be noted that the Legislature is gradually encroaching on the personal law and it has passed several Acts radically modifying the prevailing law, e.g. the Caste Disabilities Removal Act of 1850, the Christians' Marriage Act of 1872, the Hindu Widow's Remarriage Act of 1856, the Hindu Inheritance (Amendment) Act of 1929 etc. etc.

In this connection it must be remembered that while the legislature passes laws the courts interpret and apply them. In this capacity the courts also make law and while the law

<sup>26</sup> See page 282 *infra*

<sup>27</sup> There are certain exceptions to this e.g. succession to occupancy and even other tenancies in the Agra Province is regulated by a separate Agra Tenancy Act irrespective of the personal law of the parties.

made by the legislature is known as the statute law, that made by the judicial tribunals is known as the case law. As a rule decisions of the Privy Council are binding on all the High Courts and the decisions of a particular High Court are binding on all the courts subordinate to it. For the purpose of publishing the case law various law reports are issued the chief of them in India being the Indian Law Reports published under the authority of the Governor General in Council.

### *Mode of Administering Justice*

Justice is administered in the following way. Cases are started in the courts of lowest jurisdiction competent to try them. Provision is made for appeals from their decisions and in certain cases appeals can be filed from appellate decisions also in still higher courts. Apart from the provision of appeals the High Courts have the power to call for the records of any court subordinate to them, revise its decision and pass such order as they think proper. Subordinate courts can also make a reference to their High Court for its opinion on certain points.

The courts pass such orders and decrees as they think proper according to law and it is the function of the executive to carry them out. In civil cases the decrees can be executed through courts and in criminal cases punishments are inflicted usually in jails and in cases of fine it is realised through the court and the police.

In the conduct of cases parties may engage counsel to represent their cases. For criminal cases as the Government itself is a party, it maintains a staff of officials for the purpose. The Presidency High Courts have each an Advocate-General the High Courts have each a Government Advocate. They

have also got Assistants In the lower courts also there is a government pleader, helped in the conduct of cases by prosecuting Inspectors The Government has a Legal Remembrancer for each province and his assistants

In criminal cases serious offences are tried with the help of jury whose opinion is ordinarily binding upon the courts or of assessors whose opinion is not so binding.

As regards European subjects the law with respect to civil cases makes no difference between them and Indian subjects. As regards criminal cases also there is no difference so far as the substantive law is concerned but in matter of procedure there is still some difference though it is less than it formerly was Ordinarily an Indian Magistrate or Judge is disqualified for trying a European but if he happens to be a District Magistrate or a Sessions Judge he has jurisdiction to try European subjects But even then the accused has the right to require to be tried by a jury at least half of whose members must be Europeans or Americans Second and third class magistrates can try very minor cases of Europeans

Punishments are of various kinds The highest penalty is death called the Capital punishment Then there is transportation either for life or for a number of years Next to this is imprisonment for various terms which may be either rigorous or simple and in certain cases may be solitary confinement Then comes fine which may be inflicted alone or with a sentence of imprisonment Flogging is also permitted in certain circumstances Lastly there is warning which may suffice in certain cases for certain people particularly first offenders of young age For juvenile offenders as we have seen there are reformatory schools

It is a noteworthy feature of the present administration of justice that the Government itself, under certain circumstan-

ces, helps a party to prosecute its case in cases of extreme poverty. In civil matters poor people can bring a suit or file an appeal without paying the necessary court fee. Such suits or appeals are known as pauper suits or pauper appeals. In criminal cases the Government engages counsel by paying fee for the accused when the accused charged with murder etc. is unable on account of poverty to engage counsel and defend himself.

### *The Courts The High Court*

The various courts form the machinery which administers justice. Leaving aside the Privy Council, the highest tribunal of justice at present is the High Court, though in the near future we shall have the Federal Court. High Courts are established by what are known as Letters Patent issued by the Sovereign<sup>22</sup>. The first High Courts to be thus established were those of Calcutta, Madras and Bombay by such letters in 1862. Later on High Courts were established at Allahabad, Patna, Lahore and Rangoon by such letters issued in 1866, 1916, 1919 and 1922 respectively. Each High Court has a Chief Justice and other puisne judges called justices appointed by, and holding office during the pleasure of, the Crown. The total number of judges in any High Court cannot exceed twenty. At least one third of the judges must be members of the Indian Civil service and at least one third must be barristers of England or Ireland or members of the Faculty of Advocates in Scotland. The rest are taken either from subordinate judicial service or from among the lawyers of the High Court.

In certain places instead of a High Court there is a Chief Court or the Court of Judicial commissioners e.g. in Oudh,

<sup>22</sup> This was the provision made by the Indian High Courts Act passed by Parliament in 1861.

the Central Provinces, North West Frontier Province and Sind. These Courts exercise the same powers as the High Courts. But they are constituted by the Government of India.

The High Courts are mainly appellate Courts, but have also certain original jurisdiction. The Presidency High Courts have more original jurisdiction. They have also general power of supervision over subordinate courts.

The jurisdiction of the High Courts extend to civil, criminal, revenue or rent, admiralty, probate, matrimonial, testamentary and bankruptcy cases.

Certain high officers are exempted from the jurisdiction of the High Court. The Governor General and provincial head of administration members of the Executive Council of the Governor General or of the provinces and ministers of the provinces are exempted from the jurisdiction of the High Court in action taken in performance of public duties. These officers cannot be arrested or imprisoned and are not subject to criminal jurisdiction of the High Court except for offences of treason or felony. The judges of the High Courts are also exempted from arrest and imprisonment.

### *Lower Courts C 1*

For the administration of civil justice below the High Court these are the following courts—

- 1 The Court of the District Judge
- 2 The Court of Small Causes
- 3 Courts of subordinate judges
- 4 Munsif's Courts

The District Judge's Court is usually an appellate court from the decisions of Munsifs or from certain subordinate Judges in certain cases. Apart from this the District Judge has other duties. He is responsible for the management of

the lower courts within his district. He is moreover entrusted with the *original decision of cases coming under Guardians and Wards Act, Insolvency Act Succession Act etc etc*. He is generally the guardian of minors' estates and of trust property. At the same time he is also the head of his district in the matter of registration of documents.

As a rule the District Judge is also the Sessions Judge for criminal cases and his duties as such will be described in connection with criminal courts.

Usually a civil district forms a district for the purposes of having a District Judge but when districts are smaller there is only one judge for two districts. Courts of Small Causes try simple money suits upto a certain valuation which is different for different places, e.g., Rs 500, Rs 1000 or Rs 2000. Their decisions are final and no appeals lie against them. In larger districts there are separate Small Cause Courts Judges but in smaller districts the cases of the nature of small causes are tried by other civil courts.

Subordinate judges may be of First class or Second class according to their pecuniary jurisdiction. Munsifs' courts are the *courts of lowest grades for civil cases*. Usually apart from the salaried Munsifs there are a number of honorary munsifs in a district to try cases. Again in certain provinces there are village Munsifs or village panchavats. They also try cases of petty nature.

### *Criminal*

Below the High Courts are the following grades of Courts for criminal cases —

- 1 The court of the Sessions Judge
- 2 The courts of Presidency Magistrates and District Magistrates

- 3 The courts of other Magistrates, classified into 1st class, 2nd class and 3rd class Magistrates

The office of the Sessions Judge is combined with that of the District Judge. He has both original and appellate jurisdiction. He tries cases of serious offences and hears appeals from the decisions of Assistant Sessions Judges and 1st class Magistrates. There may also be Assistant Sessions Judges. Sessions Courts can inflict any penalty, but a sentence of death passed by them needs the confirmation of the High Court. Serious offences cannot be tried by courts lower than Sessions Courts.

The Presidency Magistrates and District Magistrates are 1st class magistrates. There is a Chief Presidency Magistrate. Presidency Magistrates directly deal with the High Courts and appeals from their decisions are heard by the High Courts. District Magistrate's court is usually an appellate Court from the decisions of the 2nd and 3rd class magistrates.

The other Magistrates are classified into 1st class, 2nd class, and 3rd class. Magistrates of the first class can inflict the penalty of imprisonment not exceeding 2 years and of fine not exceeding one thousand rupees. They can also pass sentences of solitary confinement and whipping. Magistrates of the second class can pass sentences of imprisonment for a term not exceeding six months and of fine not exceeding two hundred rupees. They can also pass sentences of solitary confinement but not of whipping. Magistrates of the third class can pass sentences of imprisonment for a term not exceeding one month and of fine not exceeding fifty rupees.

There are usually a number of honorary magistrates in each district who may be of the 1st, 2nd or 3rd class, but mostly of 2nd and 3rd classes.

As we have seen above<sup>23</sup> the magistrates are also collectors i.e. revenue officers. This part of their duties will be described in connection with revenue courts. First class magistrates are, leaving the Presidency Magistrates and the District Magistrates, usually the Deputy Collectors. Second class magistrates are usually the Tahsildars or Mamlatdars. Third class magistrates are mostly honorary or village officials in southern provinces.

Apart from these courts there are established in certain provinces village panchayats which can try cases of a petty nature.

In connection with the administration of criminal justice it is important to note the system of jury and assessors and the existence of justices of the peace. The difference between jury and assessors is mainly as regards the weight of their opinion. The judge is bound by the opinion of the former but not of the latter. Both jury and assessors are selected from among the respectable persons of the town or the district but are not lawyers. The verdict of the jury if not unanimous is that of the majority. The number of jurors is nine for the High Court and upto nine, as the Local Government may determine, for other courts but it must be odd. Serious offences are tried with the help of jurymen. In the High Court trials are always conducted with the help of jury except in cases of offences against the state. There are no jurors or assessors for civil cases.

Justices of the peace are appointed by local governments by notification for and within a specified local area. The following are the *ex officio* justices of the peace: Governor-General, Governors and other heads of the provinces, members of the Governor General's Executive Council and the

<sup>23</sup> See pages 215 16 217 above

Judges of the High Courts are justices of the Peace within and for the whole of British India. Sessions Judges and District Magistrates are justices of the peace within and for the whole of their respective provinces and Presidency Magistrates are justices of the peace within and for the towns of which they are respectively magistrates.

### *Revenue or rent*

As we have seen above<sup>30</sup> for revenue and rent purposes the gradation of officers is usually like this. The Board of Revenue, the Divisional Commissioners, the Collectors, the Assistant Collectors, the Tahsildars or the Mamlatdars and the village officials. These are empowered to hear or decide cases of rent and revenue according to their jurisdiction. The Board of Revenue is the highest authority but it may refer a case to the High Court. It is usually an appellate court from the decisions of Commissioners. The commissioner is usually an appellate court from the decisions of the Collector or of the 1st class Assistant Collectors. In certain cases the District Judge and not the Commissioner is the appellate court from the decisions of the 1st class Assistant Collectors. In these cases the second appellate court is the High Court and not the Board of Revenue. The Collector is usually an appellate court from the decisions of the 2nd or 3rd class Assistant Collectors. Assistant Collectors are classified into 1st, 2nd or 3rd classes according to their jurisdiction. Ordinarily the 1st class Assistant Collectors are the Deputy Collectors and the 2nd class Assistant Collectors are the Tahsildars and the 3rd class Assistant Collectors are village officials or honorary assistant collectors. There may be honorary assistant collectors of all

<sup>30</sup> See pages 213-14 above.

these three classes

It is important to note that there are slight differences in matters of judicial administration in various provinces for courts below the High Courts. These differences are greater in revenue and rent matters because while the Civil Procedure Code and the Criminal Procedure code are the same for the whole of India the revenue and tenancy Acts are different for different parts of the country. A second reason for these differences is the difference in the fiscal organisation of different provinces e.g. in certain places there are no commissioners, in certain places they have greater powers than in others, and again in some places there is no Board of Revenue and so on. Then there are different systems of assessment and collection of rent and revenue. The account given above is a general account and as regards revenue and rent courts it mainly applies to the United Provinces.

#### ADMINISTRATION OF BURMA AND ADEN

*It has been said above that under the new Act of 1935 Burma and Aden will cease to be parts of India. We shall therefore very briefly give the chief features of the administrative systems which have been provided for them respectively.*

#### BURMA

##### THE EXECUTIVE

*In many respects Burma will be governed like a province though in certain respects it will not have a provincial character. Its executive authority will be exercised by a Governor appointed by His Majesty by a Commission under the Royal Sign Manual. He will have a council of ministers whose number cannot exceed ten to aid and advise him in the exercise of his functions other than*

those which he is required to exercise in his discretion. The provision for appointment or dismissal of ministers are the same as those in India.

The Governor of Burma, as regards the functions which he will exercise in his discretion, shall be under the general control of the Secretary of State and shall comply with such particular directions as may be given by him from time to time. In certain very important respects the Governor of Burma will exercise powers like the Governor-General of India. For example — (a) His executive authority will also extend to the raising in Burma of naval, military and air forces and to governance of His Majesty's forces borne on the Burma establishment. (b) The Governor will exercise in his discretion the functions with respect to defence, ecclesiastical affairs, external affairs except the relations between Burma and any part of His Majesty's dominions, and also the control of monetary policy, currency and coinage etc. (c) For the exercise of his functions referred to in clause (b) above he may appoint counsellors to assist him, whose number must not exceed three. (d) He can also appoint a financial adviser.

### THE LEGISLATURE

As regards the Legislature it will be bicameral and the Chambers will be respectively known as the Senate and the House of Representatives. Each Senate will continue for seven years and each House of Representatives for five, unless sooner dissolved. So that none of them is a permanent body like the upper house in India. The procedure of legislation is very much the same as in India. The legislative powers of the Governor include passing of Governor's Acts, promulgating ordinances both when the Legislature is in session and when it is not, as will be the case in India, and more than these, making regulations for the peace and good government of certain areas.

## THE JUDICIARY

*The High Court as the highest judicial tribunal in Burma will continue to be so and appeals from its decisions will lie to His Majesty in Council*

## THE RAILWAY BOARD

*There will be a separate Railway Board for Burma consisting of a President and eight other members which will exercise the executive authority of Burma in respect of the regulation and the construction, maintenance and operation of railways in Burma. This Board will have a separate Railway Fund as in India*

## ADEN

*Provision for the administration of Aden will be made by His Majesty in Council. The Act itself has made no such provision. In respect of judicial administration it lays down that the appellate jurisdiction from courts in Aden shall be vested in some court in India. To that extent the administration of Aden will be subordinate to that of India*

### *Provincial Administration (Continued)*

In this chapter we shall see how the provincial administration is carried on with respect to the important subjects of administration, namely, those of Finance Land Revenue and Excise, Agriculture and Industries including Forests, Irrigation, co-operative societies and famine policy Medical Relief, Public Health and Sanitation Police and Jails

The subject of Local Self Government and that of Education will be treated in the next two chapters respectively

#### *Finance*

As we have seen in the last chapter<sup>1</sup> there has been a gradual devolution of more and more financial control from the Government of India upon the Provincial Governments. At present provinces have been given almost complete authority over certain specified heads of revenue<sup>2</sup>. The Provincial contributions have now been completely remitted by the Government of India. Now the Provincial Governments are in full charge of land revenue and revenues arising from stamps, excise and irrigation etc. They have also other income arising from various sources such as in certain provinces taxes on salt or income from forests, from administration of education, justice, industries etc

<sup>1</sup> See page 207 above.

<sup>2</sup> See page 67 above.

Apart from control over the specified heads of revenue the Provincial Governments have also been given power to impose fresh taxes subject to certain restrictions

The annual budget or the estimated revenue and expenditure is laid before the Legislative Council in the form of statements, and proposals of the Government for appropriation of revenues are submitted to the vote of the Council in the form of demands for grants. But certain proposals need not be so voted. The Governor in Council, however, has the power to restore in certain cases any grant which the Council refuses or reduces. The Provincial Governments have also now the power to raise loans on the security of the revenues allotted to them. The purposes for which such loans can be taken are maintaining of relief work in times of famine, improving of irrigation or means of communications etc, but when taking such loans the sanction of the Central Government has to be taken for the rate of interest and mode of payment etc.

The provinces have also been given great control over their expenditure particularly in the matter of transferred subjects. It is only in certain cases chiefly relating to new appointments or public works requiring vast expenditure that the sanction of the Central Government is necessary.

As between Reserved and Transferred subjects the Governors have been given the power to specify the fractional proportions of the revenues and balances of their provinces to be assigned to each section.

To give an idea of the important heads of revenue we give below some figures for the United Provinces in the North and Bombay in the South.

United Provinces Estimated Revenue for 1935-36

Principal Heads	Revenue
	Rs.
Land revenue	5,80,54,492
Stamps	1,70,15,500
Excise	1,32,06,000
Forests	46,03,900
Registration	11,50,000
Salt	20,000
<b>Total</b>	<b>9,40,49,892</b>
Irrigation	1,35,03,671
Interest	12,80,000
Railways	1,44,000
Civil administration	45,25,919
Civil works	21,49,870
Miscellaneous	17,40,350
<b>Total Revenue</b>	<b>11,73,93,702</b>

Bombay Estimated Revenue for 1936-37

Principal Heads	Rs
Land Revenue	3,45,28,000
Excise	3,30,54,000
Stamps	1,37,95,000
Forests	47,16,000
Registration	15,03,000
Scheduled Taxes	18,13,000
<b>Total</b>	<b>8,94,09,000</b>
Interest	94,83,000
Irrigation, Navigation, Embankment etc.	19,78,000

Civil administration	1,08,97,000
Civil works	45,36,000
Miscellaneous	39,87,000
Extraordinary Receipts	68,000
<b>Total Revenue</b>	<b>12,03,58,000</b>

*Land Revenue.*

Land Revenue is now a Provincial Subject and its administration is chiefly in the hands of the Local Governments<sup>2</sup> In dealing with this subject we have to consider its various aspects, chiefly (a) method of administration, (b) nature of settlement (c) class of tenure (d) Assessment and mode of collection and (e) incidence of revenue

*Method of Administration*—The method by which the subject of land revenue is administered is different in different parts of the country At the top there is usually either a Board of Revenue or Financial Commissioner. In Madras this Board consists of four members, while in other provinces it consists of two, such as in the United Provinces, Bengal and Bihar But it may be noted that in the latter provinces there are Divisional Commissioners also In Burma, the Central Provinces and the Punjab there are Financial Commissioners, the former two having one each and the latter two, but in the province of Bombay there is neither a Board of Revenue nor a Financial Commissioner.

Except in Madras we have in all provinces Divisional Commissioners who rank next to the Board of Revenue Below these Commissioners there are Collectors of districts

<sup>2</sup> In the Central Government this subject is amalgamated with Education and Public Health and is in charge of a member of the Executive Council who holds the portfolio of Education, Public Health and Lands See page 202 above.

known in the non regulation provinces as Deputy Commissioners. Below those Collectors are Assistant Collectors or Deputy Collectors and below them the Tahsildars, the mamalatdars or Mukhtarkars as they are variously known in different provinces. Lastly come the village officials, the Patwari or Kulkarni or talati as he is variously known, together with the Lambardar of Northern provinces who is generally responsible for collection of revenues from his co-sharers. The Government through its Patwaris and Qanungos maintains a record and map of all lands, their area, produce, habitation etc and of all rights in all land.

It may be noted that the higher revenue officials have double duties of collecting revenues and deciding revenue and rent cases but for purposes of deciding cases the Government have constituted various honorary courts also.

For the different provinces there have been passed different Acts for the proper administration of revenue and rent, such Acts being for example, the Bengal Tenancy Act, the Agra Tenancy Act, the Oudh Rent Act or the Land Revenue Act of the United Provinces of Agra and Oudh, etc. The Government also takes particular care to protect the tenant from the oppression of the landlords and also of the money lenders. It has passed laws on the one hand to secure the tenant in possession of their holding and reduce chances of ejectment and on the other to reduce their credit by making their possessions inalienable. So that moneylenders may not take their land in lieu of their money and may not burden them with debts.

### *Nature of Settlement*

The technical term for determination of revenue including the method by which the Government's share of the produce

or the rental of the land is determined and the manner in which the records of the land and rights in it are kept is Settlement or Bandobast in the vernacular.

Usually there are two kinds of settlements prevailing in India the Permanent Settlement and the Temporary Settlement. The former prevails in Bengal Bihar certain eastern districts of the United Provinces and certain northern districts of the Madras Presidency while the latter prevails in the rest of the country. The system of Permanent Settlement was introduced by Lord Cornwallis by law passed in 1793 at first in Bengal. Later on it was extended to other parts of the country. The purpose of introducing this system was to do away with the evils of the farming system prevailing at the time to secure the landholders in their possession of land and to fix the revenue payable by them once for all in order that they may have an incentive to improve the land.

In permanently settled areas the Government has fixed the sum which a particular landholder has to pay to it. This sum cannot be varied and has been made permanent once for all. This system has both its advantages and disadvantages, the latter increasing with the progress of time. In considering these we should have in mind separately the interests of the Government, of the landlords and of the actual cultivators of the land, and of the land itself. The Government has chiefly three advantages. First of all it has got a fixed amount to realise and has nothing to fear from the uncertainties of seasons, weather, famines, hard times, depression and the like. There is never any reduction in its income. Secondly it is saved the trouble and expenses of periodical settlements and thirdly it gets a wealthy and powerful class of people usually loyal to it and helping

it in times of need. Its disadvantage to the Government is the impossibility of realising anything more than the fixed sum. The value of land has vastly increased since then and consequently the proportion of the Government's share has diminished. So that while it started with about 90% of the rental it now gets only 25%. This is certainly a great loss. However, the Government covers a little of it by some supplementary income. The landlord is in the most advantageous position. He has to pay only a fixed sum and nothing more, while his earning is increased in three different ways, (a) by making improvement on the land, (b) by realising as much rent as possible in former days and even now by enhancing it whenever law permits. (c) by the progress of time which has much enhanced the value of land and made competition, for getting land to cultivate, much keener chiefly due to increase of population and progress in trade and cultivatory methods etc. The landlord has no disadvantage except that arising from the mode of collection of revenue, which in case of default of timely payment may involve extinction of his title. The cultivator however on the other hand has nothing to gain by this system. In former days the landlords exacted as much from them as they could and even now they can enhance their rents according to law. The Permanent Settlement did not settle or fix their rents. So that the oppression of the landlords resulted in passing of tenancy laws improving the lot of the cultivators. There is again another disadvantage to the tenant. The landlords grown rich with their income partly earned and partly unearned often spend their time in cities. They are usually known as absentee landlords, because they are absent from their holdings. So that they have no sympathy with the cultivators and often may not care for improvement for their land.

The land itself gained much in the beginning because the landlords had an incentive to improve it. But generally partly due to absentee landlordism and partly to the absence of any special advantage to the cultivators the land too has no particular chances of improvement. On the whole Indian opinion is not in favour of Permanent Settlement, and as a matter of fact its extension to other areas was stopped long ago. Experience has shown that long term settlements are best in the general interests of all parties.

Temporary Settlements again are of different kinds in different provinces. These settlements are either made with the cultivators of the land themselves or with big landlords or again with smaller landlords known as peasant proprietors. The temporary settlements are usually made after a period of thirty years. In certain places however the period is reduced to twenty and then again in some places only to fifteen years, while for certain kinds of lands the settlement is only quinquennial. Settlement operations are conducted under the supervision of a Settlement Officer usually belonging to the Indian Civil Service and include the measurement and survey of land, calculation of the yield or rental of the land and fixing the rate or amount of revenue. No party permanently gains or loses in this system and at the same time the impossibility of revision within the fixed period is an incentive to improve the land.

### *Cast of Tenure*

Lands are held in different parts of the country according to different kinds of tenure. Broadly speaking there are two classes of tenure, the Ryotwari System and the Zamindari System. The essential feature of the former is holding of the land by the Ryot i.e., by the tenant or the actual cultivator of the soil in his own right. He holds

the land directly from the Government and pays the revenue directly to it. He exercises various rights of proprietorship in his land and can mortgage, sell or alienate otherwise or sublet his land or any part of it. At the same time he has another advantageous position. He can relinquish even a part of his holding. So that he may not be forced to hold an unprofitable holding under fear of losing his profitable holdings also. At the same time his lands pass on to his successor after his death. So that his interest is both inheritable and transferable. This system prevails in Southern India and was introduced by Sir Thomas Munro who later on became the Governor of the Madras Presidency.

In the Zamindari System, between the tenant or the actual cultivator of the land and the Government there is a class of middlemen known as Zamindars or Landlords. The Government takes the revenue from the zamindars and only in exceptional cases when the landlords are unable to realise their rent<sup>1</sup> from their tenants can they seek direct intervention by the Government to realise its revenue directly from the tenants. The landlords are proprietors of the lands and have all rights of proprietorship like those of transference and succession etc. The tenants hold their lands from them and have only limited rights. The interests of some tenants are both heritable and transferable, while of some are only heritable and nontransferable. Then again the rents of some can be enhanced at the pleasure of the landlord, of some only in certain circumstances and at certain intervals, and of some again the rent cannot be enhanced. Similarly some can be ejected at the will of the landlord, some only in special circumstances and some cannot be ejected at all.

<sup>1</sup> The payment made by the tenant to the landlord for cultivating the land is called the rent while the payment made by the landlord to the Government is called the revenue.

This system prevails in Northern India, but there are three kinds of it observable in different parts of the country. In one there are the landlords of the permanently settled places. In another there are the big Zamindars or Taluqādars and in the third there are peasant proprietors. The landlords of Bengal etc. are of the first class and they are in the most advantageous position. In Oudh the landlords are called taluqadars and they also enjoy many privileges and are in a better position than other landlords. The landlords of the Punjab and Western districts of the United Provinces are peasant proprietors. These are associated together in village communities which hold the land as a body and whose members are jointly and severally responsible for the payment of revenue. But the joint liability is only a legal liability and is not enforced. So that in practice these proprietors are like those of the ryotwari system of the South and they may be regarded as such.

### *Assessment and Mode of Collection*

The mode of assessment and collection of revenue has differed from time to time and even now it is different in different parts of the country. In the permanently settled districts the land revenue cannot vary. But originally it was assessed at 90% of the rent collected, that is, the farmers<sup>5</sup> kept 10 per cent as their profits or a kind of commission. Revenue can be assessed either on the rent collected from the tenants or on the actual or estimated, or an average of

<sup>5</sup> In the beginning there was farming system that is certain persons known as farmers were appointed to collect the rent from the cultivators and pay it to the Government. Those who offered to pay the greatest amount i.e. the highest bidders were made farmers. Later on those farmers became the Zamindars.

actual, produce of the land<sup>6</sup> In the *Zamindari* System it is assessed on the rents which the *Zamindars* are entitled to realise from their tenants and can be revised only at the time of next settlement In the *Ryotwari* System it is assessed with reference to the produce or the soil of the land In *Madras* the former system prevails and the revenue is determined according to the estimated net produce of the land In *Bombay* the latter system prevails and land is classified for purposes of assessment according to the nature of the soil

Land revenue is collected from those responsible for its payment through Government officials The *patwari* is usually in charge of collection of the village revenues The village headman and in some parts the *lambardar* who is only the chief co sharer in a particular village or *Mahal*<sup>7</sup> are responsible for collecting the revenue from other people or the co sharers

Care is taken in the collection of revenue to refrain from putting unnecessary pressure upon the landlords But default of payment may entail attachment and sale of property, arrest and detention in civil prison of the person or even loss of the whole property in permanently settled areas

One point in this connection deserves particular notice The revenue is determined at the time of periodical settlements But bad harvest or famine may put the people to very great inconvenience In such circumstances it would not be wise for the Government to realise its full dues as in ordinary years This was a mistake committed in early

<sup>6</sup> In early times the State took a fixed proportion of the actual yield Akbar assessed the revenue on an average of 10 years produce

<sup>7</sup> *Mahal* is the unit of assessment in *zamindari* land and is usually a part of a village But a small village may form one *mahal* and some times a *mahal* may even exceed the boundaries of a village

days of the Company rule and it caused widespread grievance. There are two courses for the Government to adopt. In the first place it may fix the revenue after due deductions for such years. But this in practice cannot be of much use, because the people cannot be expected to set apart the deducted part every year for use in bad years. In the second place the Government can make remissions in the revenue of those particular years irrespective of the assessment or time of settlement or can permit suspension of payment for a fixed period according to the condition of the people and the variations in the seasons. At present this is the policy adopted by the Government and it has found popular approval. It may also be remembered that in bad years the Government tries to help the agricultural classes directly by advancing loans called the *taqavi*.

### *Incidence of Revenue*

The incidence of revenue also varies in different parts of the country, that is, the burden which falls upon the cultivator or the landholder is not uniform throughout the country. We may consider the permanently settled areas, the ordinary zamindari lands and the ryotwari holdings separately. In the first, as we have seen, the original proportion of the revenue was fixed at 90 per cent of the rent collected. Now however it is only about 25 per cent, which is much lower than in other provinces. In the ordinary zamindari lands the revenue is about 50 per cent of the rent. It sometimes exceeds that percentage but is usually lower than that, coming down sometimes to one third or even one fourth of the rent. The burden of this revenue as falling upon the tenants cannot be described with any accuracy. But it may be said that it is about 10 per cent of the gross produce and often much less. In the ryotwari lands the maximum share

of the Government may be said to be 20 per cent of the gross produce<sup>8</sup>. But in practice the Government takes less, its share coming down sometimes even to less than 10 per cent.

### *Excise*

Excise is also now like the land revenue a provincial subject. It is a tax on the manufacture and sale of intoxicating liquors, drugs, toddy and opium, including the revenues derived from licenses to hotels, shops etc. It is known as *âhkârî* in the vernacular and is a very important item of provincial revenue. Formerly it included the tax on imported liquors also but that item has now been included in custom and is accordingly part of a central subject. This tax like many others varies from province to province.

### *Agriculture, Industries and Public Works*

*Agriculture and Public Works and with certain reservation* Industries also are now provincial subjects. Larger provinces have got separate departments for each of these subjects. But they are differently administered in different provinces. The Department of Agriculture encourages and helps scientific study of agricultural methods and itself keeps experimental or demonstration farms. It helps the farmers not merely by giving advice and holding exhibitions but also by supplying better seeds and implements etc. The larger provinces maintain agricultural colleges<sup>9</sup> and we find a number of schools also. India is an agricultural country and great attention must be devoted to agriculture. Between seventy and seventy five per cent of her people are

<sup>8</sup> Compare this percentage with that prevailing in earlier times.

<sup>9</sup> The Government of India itself maintains an Institute of Agricultural Research at Pusa in Bihar. The Government of India has also a Provincial Cultural Adviser to help the Provincial Governments.

directly supported by agriculture

The Department of Industries looks to the growth of industries and technical education. As a matter of fact agriculture is still the most important industry in India which is looked after by the Agricultural Department. Though India has been recognised by the League of Nations to be one of the eight chief industrial countries of the world it stands in great need of industrial development which has got much scope. Fortunately there are signs of improvement also. At present organised industries have engaged only one per cent of her people and even all industries together (excluding of course agriculture) support only one tenth of her population.

The Department of Public Works looks after Irrigation Buildings and Roads. Formerly it had the charge of military works also but now that charge has been transferred to the military department of Central Government. Again this department had the charge of Railways also, but they too have now been placed under a different authority. Only to a very limited extent is the question of railways left to this department. This department is usually divided into two sections. One looks after Irrigation and the other after Buildings, Roads, and Railways etc. Now-a-days the tendency is to leave much of Buildings and Roads work to local bodies like the Municipal and the District Boards. In Bengal the Irrigation Department is separate from the Public Works Department which looks after Public Works and Railways while the Irrigation Department deals with Irrigation and Navigation etc.

The official organisation for this department has at the head Chief Engineers who are in most cases Secretaries to Government also. The Provinces are divided into circles and circles into divisions mostly corresponding to civil

districts and below the Chief Engineers are Executive Engineers. In charge of the circles are usually Superintending Engineers or Deputy Chief Engineers.

### *Forests*

Allied with these subjects is the subject of Forests. The administration of forests also is now in the hands of the Provincial Governments for whose assistance the Central Government keeps an Inspector General of Forests. Forest Departments look after the forests and manage them with a view to help the people and their cattle particularly in times of need for example in days of failure of rain. Forests are preserved and protected and even grown. The latter process is technically known as afforestation. There is a Forest Research Institute at Dehradun in the United Provinces controlled and presided over by the Inspector General of Forests.

For administration purposes the country is divided into circles. One circle sometimes covers a whole province but there may be three or more circles in a province. Each circle is in charge of an officer known as the Conservator of Forests and where a province has three or more circles there is also a Chief Conservator who is the head of the Forest Department in that province. A circle is divided into divisions which mostly correspond to civil districts. A division is again divided into range. Forests are now worked at a profit and the revenue has been steadily growing.

### *Irrigation*

As we have seen above the Government itself takes an interest in Irrigation which is managed through the Public Works Department or through a separate Department of

**Irrigation as in Bengal** In India the subject of irrigation is very important for agricultural purposes<sup>10</sup> because of the uncertainties of rainfall, failure of monsoons and unequal distribution of rainfall throughout the seasons

Irrigation works in India have shown a greater success than anywhere else Private enterprise is also responsible for irrigation works but larger operations are mainly the work of Government alone Irrigation works can be classified from different points of view One classification is based on the source of water, according to which there are three classes—canals, tanks and wells The construction and maintenance of canals is almost entirely the work of Government In the United Provinces and the Punjab where canal operations are on a large scale, the water of rivers is intercepted somewhere near the head and side channels are constructed to divert it in different directions So that the canal is something like a small river coming out from the larger one In Madras the water is intercepted at the head of the delta before the river enters the sea and from there it is distributed over the fields by small channels Irrigation by tanks is most common in Madras There, tanks are reservoirs of water and are like big lakes lying between two hills They are formed by constructing embankments or dams Water is taken to the fields by means of sluices Irrigation by wells is common throughout the country and though the digging and maintaining of a well may be a small affair and even the area irrigated by any well is ordinarily small, taken as a whole the wells are very important for irrigation and they irrigate a large area (30 per

<sup>10</sup> In the whole of India 12 per cent of the cropped area is irrigated The percentage is higher for Sind (over 78 per cent) and the Punjab (over 37 per cent) For the United Provinces it is over 10 per cent and for Bengal it is almost negligible (only 3 per cent)

cent of the total irrigated area) The construction and maintenance of wells is entirely dependent on private enterprise.

Another classification proceeds on the basis of storage. Government works are either those dependent on rivers which flow all the year round or those dependent on artificial storing of water. The former comprise canals, the latter tanks. Then again there was a distinction drawn between major and minor works, the former again being divided into productive and protective. But now the works are classified differently from the point of view of revenue and account. For some works no capital accounts are kept. They form one class of non capital works. Those for which capital accounts are kept are either Productive or Non-productive, the former are those which yield within ten years of their construction sufficient revenue to defray the interest on the capital outlay and meet the working expenses. At present the Government gains about  $5\frac{1}{2}$  per cent on the capital invested. In 1933-34 the gain was 5.54 per cent. The total capital invested in irrigation works shows a great increase from Rs. 42.36 crores in 1900-01 to Rs. 1,0 crores in 1929-30 and to Rs. 148.76 crores in 1933-34. The charges which the Government levies for supplying water to the cultivator vary in different provinces and the mode of assessment also differs for different places. They also vary according to crops. But on the whole they are very moderate.

### *Co-operative Societies*

The Co-operative movement deserves special attention in this connection. In the first place it has proved very useful to the agricultural classes and in the second place it has shown remarkable success in this country. The movement was started with the purpose of helping the poor peasants by enabling them to get loans on easy terms. So that they

may not fall into the clutches of greedy money lenders India is a poor country and its cultivators are particularly poor. At the same time on certain occasions, as marriage, they spend recklessly. So that they always need the help of money lenders who virtually rob them of all their profits and also of their property. As a matter of fact this sad condition has been prevailing all over the world and has been serious in Germany and certain other countries.

The Government has tried to reduce the credit of the peasants by making their lands inalienable. It also advances direct loans in the form of *taqavi* and in bad years makes remission or suspension in payment of revenue and also of rent in most cases. All this however has not yet removed the evil.

The cooperative movement has been found to be a great means of helping the peasant. The idea is to form societies of agriculturists which on their joint credit and liability can secure loans on easy terms. At the same time these societies look to the welfare of their members and see that they do not fall into idle habits or reckless extravagance. So that they benefit the people morally as well as economically.

The movement was originally started by Schultz Delitzsch and Raiffeisen of Germany and Luzath of Italy who formed Co-operative Credit Societies. But now this movement has also embraced activities other than merely securing easy loans for the peasants. In India the movement is of recent growth having been launched only in 1904 by the Co-operative Societies Act which was introduced by Government to permit formation of Co-operative Credit Societies and authorise Provincial Governments to appoint Registrars of Co-operative Societies. These Registrars look to the work of the Societies and encourage their progress. Now we have got some non agricultural Societies also.

For purposes of easy financing there have been opened Central Banks or District Cooperative Banks which can secure still easier loans and advance to various Societies money on very easy terms. Just as Societies have the joint credit of their members, similarly these Banks have the joint credit of societies. Over these banks there is in all major provinces, except the United Provinces of Agra and Oudh, a Provincial Cooperative Bank. They are intended to co-ordinate the working of the Central or District Banks on a provincial instead of a local basis.

The constitution of the Societies and also of the Banks differs in different provinces which have their special features according to the needs and circumstances of their people. On the whole the country has shown a steady progress in this line and we have got more than a lakh (i.e. 1,05,083) of societies working according to the figures of 1933-34. Bengal has got the largest number of societies (23,118), then comes the Punjab (21,395) and then Madras (13,581). Various Indian States have also shown remarkable progress in this direction, Gwalior having the largest number of societies i.e. 4,167, Kashmir, 2,948 and Hyderabad, 2,713.

### *Famine Policy*

Associated with the question of agricultural poverty is the problem of famine. India has frequently suffered from the ravages of famine, chiefly caused by the failure of rains. The problem has now lost its seriousness but formerly it was almost a baffling one. This progress is the resultant of three or four important factors. In the first place the resources and consequently the produce of the soil have been increased by the development of irrigation system and more scientific methods of agriculture. Irrigation has greatly compensated for the lack of rains. In the second

place the great progress achieved in the development of means of communications, particularly the railway, has on the hand made labour more mobile, so that labourers in the distressed areas can go and earn their livelihood elsewhere and on the other helps in providing immediate relief to the famine stricken areas by speedy transference of food provisions from one place to another. So that now the phenomenon of no food has changed into that of dearer food and the chief visible effect of famine is the rise of prices of food commodities. In the third place relief measures are organised and attempts are made to prevent the effect of famines. In the fourth place the general progress of the people has mitigated its evil effects.

India has always laid special stress on charity and help to the poor and the distressed who have at all times set to work both private and State enterprise. Whenever famine occurs popular sympathy helps in organising private relief and Government also takes important measures to save the life of starving people.

In considering the policy adopted by the Government to combat famine we should note three different aspects of the question. The first is concerned with the prevention of famines and with precautionary measures, the second with the organisation of relief when famine actually occurs and the third with providing medical relief which becomes necessary because of the rapid prevalence of diseases in times of famine particularly cholera and malaria. The policy followed by the Government is the result of experience, study of successive famines, reports of important Famine Commissions and deliberations. Famine Codes have been prepared for the guidance of officials.

As regards the first point the Government has adopted three kinds of measures. Firstly it secures complete in

formation about crops, culturable areas etc. on the one hand and meteorological conditions on the other. This helps in making forecasts. It also makes provision for relief when necessary. Secondly it opens railways and irrigation works for the purpose of affording protection from famines. Such works are called protective works. Thirdly provision is made annually for accumulating funds for use in famine days. The Famine Insurance Grant was instituted in 1876 and it was decided that £100,000 or Rs. 1,50,00,00 should be set apart every year. It is spent primarily for relief works and secondarily for protective work or for payment towards debts and in times of need more can be borrowed on easy terms. Under the present constitution provincial Governments except those of Assam and Burma have to make an annual contribution for famine relief and none of this raised is spent only for such relief, the surplus being accumulated into a Famine Relief Fund which is usually used for famine relief only except under certain conditions, in which case it may be spent for protective and other works for such relief.

As regards the second point the policy is —

- (a) To provide work for all who want it. For this purpose irrigation or railway works are started.
- (b) To allow only subsistence wages. The idea is to discourage idleness, without letting the people starve. If work can be got elsewhere the labourers move to those places.
- (c) To give charity to those who are unable to work on account of infirmity etc.
- (d) To give to the agriculturists money for buying cattle, seed etc. when the rains come and cultivation becomes convenient and necessary. The relief measures are so organised as to err neither on the side of indiscriminate charity en-

couraging idleness etc nor on the side of lack of sympathy allowing people to starve

As regards the third point the Government keeps the medical staff ready to render assistance whenever and wherever necessary

### *Medical Relief, Public Health and Sanitation*

One of the most difficult problems facing the Government as well as the people of India is the prevention and cure of diseases. In dealing with this subject we have to pay our attention to three points. First of all there is the high death rate<sup>11</sup> and the infant mortality<sup>12</sup> so widely prevailing in India. Then there are certain forms of diseases which demand particular consideration. Lastly there is the question of general diseases, ailments, accidents, hurts etc.

### *Official organisation*

The Provincial Governments are in charge of medical administration of their respective provinces. The Government of India has a Director General of the Indian Medical Service who supervises the medical work of the whole country. There is also a Public Health Commissioner with the Government of India to advise the Government in matters of Public Health. In the provinces at the head of the medical official organisation is the Surgeon General in the

Death rate in India is very high and so is birth rate. The rates differ in different provinces being very high in Delhi and the Central Provinces and comparatively low in Assam, Burma, North West Frontier and Bengal. In British India as a whole the death rate is about 25 per thousand and birth rate about 34. It may be noted that England and Wales show only about one half of this rate and New Zealand shows only one third.

Infant mortality is particularly high in India, specially in the United and Central Provinces. About 20 per cent of the children in British India die before completing even one year of their earthly existence and of these over 60 per cent die in the very first month after birth.

Presidencies and the Inspector-General of Civil Hospitals in other provinces. There is also almost in all provinces a Director of Public Health or a Sanitary Commissioner. It may be remembered that there are practically two aspects of medical work, one is the curative, which consists in curing or aiding the sick and the injured, which properly belongs to the medical side, and the other is the preventive, which consists in preventing diseases and improving healthy conditions. In the districts the Civil Surgeon is in charge of both the medical and the sanitary arrangements. But in Bombay Deputy Sanitary Commissioners look after the latter work. Much of the medical and sanitary work is done by the local bodies like the Municipal Boards and the District Boards. For the supervision of water and drainage work of these bodies there is in each province a Sanitary Board.

The higher medical officers of the Government usually hold commissions in the army<sup>13</sup> though their duties are mostly civil. Originally they were employed to attend to the Company's troops and servants. Now however they have to attend only to Indian army. For the English army there are the officers of the Royal Army Medical corps.

### *Hospitals and Dispensaries*

There are numerous hospitals and dispensaries scattered over the districts. Some are directly maintained by the Government, some are aided by it and some are maintained partly or wholly by the Municipal or District Boards or even by private persons or associations, for example the *Sevā Samiti*.

In this place it may be noted that apart from the western system of medication commonly known as the *alopathic*

<sup>13</sup> They are called Colonel Lieutenant-Colonel Major or Captain.

system indigenous methods are also encouraged and they are proving very useful. Medical treatment is free of charge in these hospitals and medicines are given free.

### *Treatment of Women and Children*

The treatment of women and children is a most difficult problem in India particularly because of extreme shyness of Indian women and the custom of *parda* still prevailing more or less in most parts of the country. A proper treatment of women and children will secure not only good health for them but will reduce greatly the general, and particularly infant, mortality in the country.

The Government itself takes a keen interest in this matter but has not done much in this direction. However there are various movements at work which have achieved considerable success. We have first of all the National Association for supplying Medical Aid to the women of India which was started in 1885 by the Countess of Dufferin. Its chief aims are to provide medical treatment for women and children by opening female wards in the hospitals or starting separate female hospitals and to arrange for the supply of trained women as doctors, nurses, midwives etc. The Government also makes occasional grants for this Association. Then there is the Maternity and Child Welfare Bureau which has been formed by the amalgamation of the All India Maternity and Child Welfare League which was started by Lady Chelmsford and the Indian Red Cross Society. The latter was constituted by an Act of the Indian Legislature in 1920 and has among its numerous objects child welfare. Now this movement has led to the establishment of numerous child centres and training centres for women in hygiene care of infants and similar subjects. The Government also gives considerable grants for the progress of this work. Different

provinces have organised this work differently. In the presidency towns the Corporations take an important part in this work. In the Punjab the Government, apart from giving aids, takes a direct part also, and we find that under the Director of Public Health there is an Inspector of Health Centres. In the United Provinces we have a medical woman working as an assistant to the Inspector General of Civil Hospitals and also to the Director of Public Health. Baby and Health weeks are celebrated and the State Medical Faculty, United Provinces grants diplomas to women trained in maternity and child welfare work.

There are various training centres in different provinces in midwifery, nursing, maternity, and child welfare work. These schools are mostly maintained by the provincial Governments.

### *Particular Diseases*

Particular diseases in India demand special attention. Chief among those are the Plague, the Cholera, the Small pox and various kinds of fever, malarious, typhoid etc.

The plague which began in 1896 in Bombay has been ravaging the country most unobscurely, particularly in Bombay, the Punjab, and the United Provinces. The Government takes special care to prevent the spread of this epidemic and inoculators are sent to inoculate the people. This has proved very useful. Then again doctors' orders are made to show the utility of inoculation and of destruction of rats etc. which spread the disease through fleas.

In days of cholera special precautions are taken to purify water as it is through water that cholera germs enter the body. Arrangement is also made for treatment of the sufferers.

Small pox is again a very common disease particularly in

Bengal and Madras Vaccination has proved very successful in these cases and the Government or the local bodies maintain a staff of vaccinators who go from village to village and vaccinate people particularly children. The vaccination of children has been made compulsory in most places by legislative enactment. For prevention and cure of fevers the Government encourages people to take quinine and itself supplies it at a cheap rate. There are also special hospitals or dispensaries for the treatment of other diseases like those connected with the eye or tuberculosis, hydrophobia, and tropical diseases.

#### *Training Schools and Colleges and Institutes of Research*

In this connection it must also be remembered that there are numerous schools and colleges for giving medical training, for example, in Calcutta, Lahore, and Lucknow. There is also a medical college for women in Delhi. For the study of tropical diseases and research work there is an institute in Kasauli near Simla. There is a plague laboratory in Bombay. Training and health centres for child welfare work also exist in considerable numbers.

Gradually with educational progress and social reform the work of medical aid and sanitary arrangements is becoming easier, but there is still much to be done.

#### *Police*

Now we come to the organisation of the physical strength of the Government in the Provinces, that is, the Police<sup>14</sup>. As we have already seen the Provincial Governments do not control the army, the navy or the air force.

<sup>14</sup> Provinces have their own separate police force. But in Bombay the decentralization is carried still further and every district has its own police.

Every province has got at the head of its police administration an Inspector General of Police who controls both ordinary police and police of the Criminal Investigation Department<sup>15</sup>. He is assisted by Deputy Inspectors General who have ordinarily charge of different parts of a province, while one Deputy Inspector General is in charge of the C I D Police. In each district there is a Superintendent of Police assisted by Deputy and Assistant Superintendents. In Presidency towns and in Rangoon we have Commissioners of police. Railways have a separate branch of police force known as the Government Railway Police organised differently in different provinces.

Every district is divided into a number of police circles and so is every town. Each circle is called a thana and is in charge of a Sub Inspector of Police called the thanedar. A thana which is the unit of work in police administration may have a number of outposts called Chowki within its circle. There are also Circle Inspectors who usually look after the work of the Sub Inspectors. In district towns there is a Kotwal who is in charge of the police administration of the city.

In villages the police organisation includes the village headman and the Chowkidar. In Bombay in the large villages there are apart from the headman special Police Patels exercising petty criminal jurisdiction. The Chowkidar's duties are to report crimes to the thana and to arrest offenders. He keeps a watch over the village and particularly over bad or suspicious characters.

Ordinarily the duties of the police are to look to the en-

<sup>15</sup> Commonly known as the C. I. D. This department usually investigates into specialist and particularly serious crimes which demand enquiry of secret nature. The C. I. D. police usually works under orders when investigating a crime. It is more dead than the ordinary police.

forcement of law and order and to investigate into crimes and offences and also to conduct cases which are cognizable by the police in law courts on behalf of the Crown. The authority responsible for law and order in each district is the district officer and the whole district police is at his disposal for the purpose. So the District Superintendent of Police who commands the district police is subject to his control in this respect, though departmentally he is under the Inspector General or Deputy Inspector General of Police. In the Presidency towns as observed above there is a Police Commissioner who combines in himself the functions of the District Superintendent of Police and the District Magistrate as regards responsibility for law and order. He is not subordinate to the Inspector General of Police but directly deals with the Government.

In all the strength of the Police is about 2 lakhs and the cost of maintaining this police force is about 11 crores and a half of rupees. There are also about 25000 military police costing about 1 crore of rupees.

### *The Jails*

Jails exist in order to keep confined the criminals sentenced to various terms of imprisonment. This is their primary purpose. They are places for meting out punishment inflicted by courts of law, i.e. it is there that the sentences of punishments are executed. Criminals are hanged, kept in confinement or in solitary confinement or flogged according to their various sentences within the compound walls of the prison house or the jail. Civil prisoners and under trial prisoners are also kept in jails. Ordinarily as a place where all sorts of criminals are gathered, a jail would be expected to be a very unhealthy place, both as regards sanitary conditions and moral well being of the prisoners. However,

great care is taken to improve conditions in the jails and at present many important reforms have been made in jail administration. To avoid spread of contagious diseases, prisoners of various classes are kept separated. There are women, those suffering from ailments, habitual offenders, ordinary offenders and so on. Sanitation is also made much better. Prisoners are required to work for which is both a punishment and a means of improving their character and maintaining discipline and teaching them to work. They are usually given coarse food. Prisoners are divided into three different grades called A class, B class and C class. A class prisoners have many facilities and enjoy a high standard of life. They are given better food and under certain circumstances can be allowed food they like. They are not confined in a cell and are not strictly restrained, otherwise they have all the comforts of an ordinary man. B class prisoners have some facilities and C class prisoners have still less and they are also usually kept in chains. As we have seen before, prisoners are taught some work also. The idea is to educate them so that the jails not only punish but also reformatory. It is not only to punish them but having improved their character and enabled them to work and earn the money for their support on the other. So that the jails also work as a reformatory. For this purpose on the one hand strict discipline is maintained and breaches severely punished and on the other they are employed in such work as carpet making, tent making, carpentry, and the construction of buildings.

### Classes of Jails

There are three or four kinds of jails. First and foremost is the penal settlement at Port Blair, the Andaman Islands. There those convicts are sent to be kept in service.

sentences of transportation<sup>16</sup> Under conditions and after some time they are allowed to settle there with family also Then there are the Central jails in convenient places e.g. at Yervada near Poona or at Naini near Allahabad In those jails are kept prisoners who have to serve long terms of imprisonment or other prisoners for special reasons Then there are the district jails, each district having got one such jail, where ordinary prisoners are kept Prisoners can be transferred for the sake of convenience from one jail to another Then there are subsidiary jails too and lock up for criminals sentenced to short terms of imprisonment or under trial prisoners Lastly we have the reformatory schools There is one such school at Yervada near Poona and another in Mirzapur in the United Provinces These are jails for boy criminals The prisoners who are boys usually below the age of 15 have to undergo stricter discipline than in ordinary schools and the course of training include on the one hand reading and writing and on the other practical arts like carpentry, book binding, painting etc Care is also taken of these boys after they have left the school The idea is not so much to punish the boys as to train them into better citizens Special juvenile jails have also been opened in Bengal (at Alipore), in the United Provinces (at Bareilly) and other provinces These are intended for those who being over 15 years of age are ineligible for admission to reformatory schools but are still too young to be sent to ordinary jails

### *Administration*

The penal settlement is in charge of a Superintendent who

<sup>16</sup> Now most of these are kept in jails only and not sent to the penal settlement

is responsible to the Government of India. Reformatory schools are administered by the Education Department. For the other kinds of prisons there is in each province an *Inspector General of Prisons* who is also as a rule the Superintendent of the Central jails in the province. He is usually a medical man of the Indian Medical Service. The District jails are under the supervision of the District Officer and of the Civil Surgeon in charge of the district who is also the Superintendent of the District Jail. Every jail has got a Jailor who is directly in charge of the jail administration. Below him are warders and sometimes certain prisoners themselves are appointed to supervise certain others.

The total jail population in 1930 was 9,08,316 which shows an increase on previous years. In 1931 the number came down to 9,03,158 but in 1932 it rose to 10,51,747. However in 1933 it again fell to 9,22,122. The total daily average population for 1930 was 1,29,364 which rose to 1,44,004 in 1932. But in 1933 it was 1,33,730. The total expenditure on jails was in 1930 over 2 crores of rupees which came down to Rs. 1,75,7305 in 1933. For the United Provinces of Agra and Oudh the average daily population for the year 1933 was 31659. It is to be noted that since the beginning of the century there is a variation is observed in the jail population in these province.

### *Local Bodies*

An important aspect of administration in India is the existence of local bodies for carrying on certain administrative functions connected with the localities concerned. These bodies are of different types and perform function varying in their nature and degrees of authority.

#### *Idea underlying the Constitution of Local Bodies*

The chief idea underlying the constitution of the local bodies is the securing of local self government which has become an essential part of the constitution of Indian Government. Without it the administrative structure of India as it obtains today will simply remain maimed and mostly unintelligible.

#### *Their origin*

It is undoubtedly true that some kind of local self government has always prevailed in India but the form which it has attained under the British rule is of recent growth. It will serve no good purpose to refer to the detailed municipal organisation of the capital town of the Mauryas. There may be found similarities between the municipal organisation of those days and that of today. But the actual history of the municipal organisation of the present day dates from a very much later period. Again the village has always been the smallest unit of administration and villages have been

much more autonomous in the earlier days than they are now. In most places serious attempts have also been made to revive certain village institutions of the ancient period. There was a time when the village was regarded as one complete whole and even for purposes of administration and revenue assessment or collection it was so regarded. Now, however, the structure has undergone important modifications. At the present day the village as such has retained only a little of its compactness as regards revenue administration, and in certain places the Panchayat system has made it a small territorial unit for the purposes of judicial administration both civil and criminal. But other local bodies are in almost all respects of recent origin.

### *The idea of Local Self Government*

In essence local self government has been a devolution of administrative authority from the Government and its officers to the people of definite localities or in other words to local bodies. It is not quite easy to give an accurate definition of the term Local Self Government which may convey to the reader a clear and true impression and only that Self Government, Home Rule, Independence, Autonomy and Swarajya have often been used as convertible terms. At the same time in actual practice different degrees of dependence have been attaching at different times and different places to one or more of these terms.

Under the present constitution of India local self government implies the administration of certain classes of affairs of particular localities by the representatives of the people of those localities. The localities comprise a town or a district leaving out the towns, or even smaller areas. The affairs administered in this manner are usually connected with and

tation, public health, education, medical relief, town planning, licenses for conveyances etc. It must however be remembered that the control of these affairs is not exclusively nor uniformly exercised by the local bodies. These bodies possess some powers of taxation also but have no civil or criminal jurisdiction. Apart from important limitations to their administrative authority the local bodies have to function under different degrees of official control and supervision of the officers of Government.

### *Classes of Local Bodies*

There are two broad divisions of local bodies, the one includes those constituted for urban areas and the other those for rural areas. The most important urban body is the Municipal Board and the most important rural body is the District Board. However, there are various smaller bodies constituted to administer the affairs of smaller areas, for example the town area, the notified area the village etc. In certain towns we have got Improvement Trusts and in certain ports there are Port Trusts. In the presidency towns in the place of the municipalities there are Corporations. In cantonment areas there are Cantonment Boards.

### *Municipalities their origin*

The presidency towns were the first to have some sort of municipal administration and Madras has the claim of being the first in this respect in point of time. It was in 1687, even before the foundations of Calcutta were laid that a Corporation was established in Madras. Later on Corporations were established in Calcutta and Bombay. At first the Corporations were established by Royal Charters but

Calcutta was founded by Job Charnock in 1690

later on Special Acts were passed under which they were constituted. Much later came the introduction of Municipalities in towns other than presidency towns. It was in 1850 that an Act was passed which applied to the whole of India and after that several Acts were passed for different provinces. By means of such legislation municipalities were formed in the various provinces. Thus originated the municipalities which in the presidency towns are known as Corporations and in other towns simply as municipalities or district municipalities.

### *Later development*

It must be remembered that the municipalities as they are existing today are the result of successive improvements upon and important changes in the municipalities which were formed in the beginning. While there has been a remarkable change in their constitution and powers, their number has also vastly increased. The important points to be noted with respect to the development of municipal administration are, firstly, the application of the elective principle, secondly, the functions which they perform and thirdly, the power of taxation.

It will be more convenient to look at the development of municipalities in its marked stages. The first stage, as has been observed, saw the constitution of municipalities in the presidency towns. Their functions were in the beginning very largely judicial but later on they were given certain administrative powers and were also permitted to raise certain taxes. The second stage came when the Act of 1850 and subsequent Provincial Acts were passed. Under these Acts the municipal Commissioners were in most of the provinces nominated. They were empowered to manage

municipal affairs and to levy certain taxes. The third stage came in the early seventies when several Provincial Acts were passed which extended to the municipalities the application of the principle of election. The fourth stage came with the passing of several Acts in 1883-84 which introduced very important changes. They provided for a wide application of the elective principle and at the same time increased the powers and functions of the municipalities. Moreover the municipal bodies of a number of towns were permitted to elect as their chairman a private citizen. As regards financial powers these Acts conferred greater control over finance and transferred certain items of the provincial revenues to the local bodies making them responsible for their expenditure. As a matter of fact the principles which were laid down in those Acts still govern municipal administration. The chief thing to remember is the extension of the principle of local self government. While before these Acts there was very little of local self government particularly before the Acts of the seventies, the principle has been greatly extended since the passing of the Acts. The last stage may be said to have begun in 1918 when the Government of India published a Resolution on the subject of local self government in which the object of local self government was pointed out and important recommendations were made regarding the constitution and functions of the municipal and other local bodies. According to the Resolution referred to above the local bodies should have ordinarily a substantial elected majority and the nominated members should not ordinarily exceed one fourth of the total number. In the municipalities the nominated chairman should gradually be replaced by an elected chairman. At the same time suggestions were made for increasing the powers of the Municipal Boards over taxation. It may be

remembered in this connection that in the United Provinces of Agra and Oudh an Act was passed in 1916 called the United Provinces Municipalities Act which defined the constitution and provided for the government of the municipalities in these provinces

### *Number and Composition of Municipal bodies*

The number of municipalities in British India in 1921-22 was 739 and in 1930-31 it was 781<sup>2</sup> which may be taken to be the present number. Of these only about 71 have got a population of 50 thousand and over, while the rest have a population of below 50 thousand each.

As regards the composition of the municipal bodies it is important to note that the elected members form a substantial majority and the number of officials is very small as compared to the number of non officials. The non officials taking all municipalities together outnumber the officials by about six to one.

The percentage of ex officio members is only seven which some years back was twelve and of nominated members is 25 which some years back was 30. The proportion varies greatly with different provinces. The chairman is now usually in all the municipalities a non official.

### *Powers and functions of the Municipal Boards*

The powers and functions of the municipal boards are regulated by the several Provincial Acts which define in detail the powers to be exercised and the functions and duties

<sup>2</sup> Bombay has the largest number of municipalities there being 155 including the Corporation for the City of Bombay. Next comes Bengal in which there are 118 municipalities including the City Corporation of Calcutta. Next comes the Punjab where the number is 107 and after that the United Provinces where it is 85.

to be performed by the boards concerned as also the manner of such exercise or performance<sup>3</sup>. In general the functions of the municipalities can be classed under four heads namely —1 Public Safety, 2 Public health, 3 Convenience, and 4 Education. The municipal boards are also empowered to make rules and regulations as to procedure etc. and bye laws for the purpose of promoting or maintaining public safety, health and convenience or for securing better administration, not inconsistent with the Acts. In order that the municipal boards may properly meet the expenditure required for the performance of their duties provisions have been made for their income and they have been empowered to levy and collect certain taxes. Their whole income is usually made up of the following items —

(a) Taxation. This forms the most important source yielding about two thirds of the total income. The chief taxes included (1) octroi, which is a tax on goods or animals brought into the town for local consumption or use, (2) taxes on lands and buildings, (3) taxes on trades and callings,

<sup>3</sup> For example the United Provinces Municipalities Act No 2 of 1916 mentions in Section 7 the duties of municipal boards which are obligatory upon them. They include lighting and watering of public streets and places, cleaning public streets, places and drains, regulating offensive dangerous or obnoxious trades, callings and practices, constructing, altering and maintaining public streets, markets, latrines, drainage work etc., registering births and deaths and establishing and maintaining a system of public vaccination, providing public medical relief and establishing, maintaining or supporting hospitals and dispensaries and establishing and maintaining primary schools etc.

Again Section 8 of the Act authorises a Board to make provision for acquiring land and laying out or constructing buildings, constructing or maintaining parks, libraries, lunatic asylums, Dharmshalas, bathing ghats, tanks and other works of public utility, making a survey, constructing, subsidising or guaranteeing tramways, rail roads or other means of locomotive and electric lighting or electric power works etc. etc.

(4) taxes on animals and vehicles, (5) tolls<sup>4</sup> on vehicles, animals etc. entering the town (6) water tax (7) lighting and conservancy rates

(b) Income from municipal property

(c) Contribution from provincial revenues

(d) Other miscellaneous sources

Apart from these sources municipalities are also empowered to borrow money on security of their funds. Usually they borrow from Government.

The chief items of expenditure are — 1. Conservancy, 2. Public Works, 3. Water Supply, 4. Education, and 5. Drainage.

It must be remembered that though the municipalities have full powers over municipal affairs they are subject in important respects to the control of Government usually exercised by the Collector of the district and Commissioner of the division or the Provincial Government. In cases of bad administration or gross negligence the Government has the power to supersede a municipality and it has in certain cases exercised this power even in recent years, as in Benares.

Municipal administration is a part of local self government and is, by virtue of the Government of India Act, 1919, a transferred provincial subject which is administered by the provincial Governor with the advice of his ministers.

### *Corporations and Boroughs*

As we have noted above the presidency towns have corporations in place of municipalities. These are also called city municipalities, others being called district municipalities.

<sup>4</sup> Tolls are levied on roads and ferries.

In Bombay presidency however since the passing of the Bombay Municipal Boroughs Act of 1925 the larger municipalities are called municipal boroughs

### *Officers and Committees of the Municipal Boards*

The chief officers of the municipal board are the Chairman who in Calcutta is now since 1925 called the Mayor, Vice Chairman, called in Calcutta Deputy Mayor, Executive Officer, Deputy Executive Officer, Engineers, Secretary etc. Usually the Municipal Boards form various committees for facility of administration, for example, Public Health Committee, Education Committee etc. These committees have their own chairmen

### *Election*

As has been observed above most of the members or as they are called municipal commissioners are elected. The election proceeds by wards, that is, the whole municipal area is divided into parts known as 'wards' and each particular ward elects a particular number of members. Communal representation has also been secured. The qualifications necessary for being a voter are based on educational attainments and ownership or occupation of property. The people owning or occupying a house having a prescribed minimum rental value or having a prescribed capital value<sup>5</sup> can vote and so can graduates. Again those who pay income tax or those who have a prescribed minimum of income can also become voters. The ordinary qualifications of being a British subject, not unsound of mind, not under

<sup>5</sup> For example in United Provinces the prescribed annual rental value must be at least rupees 36 while in Bombay it is only rupees 12 and the capital value only Rs. 200

a particular age (21 years in U. P.), nor bring in or vent or convicted of certain offences are also necessary<sup>6</sup>

### *Town Areas and Notified Area*

In the case of smaller towns where the introduction of full municipal government is no thought proper but where it is found that some measure of municipal government should be introduced, they are declared as notified area or town areas. The inhabitants of these places are allowed to administer their local affairs in certain measure to example, sanitation. They are however not competent to levy taxes except to the extent of certain stall rates. Their powers are much restricted and they are controlled in an important degree by Government officials like the Tahsildar. The principle of election obtains and the administering body is known as the Town Area Committee or the Notified Area Committee, which is composed of members elected or nominated or both according to rules.

Such an area must not be a pure agricultural village and must contain a town or a bazar. A notified population a town area should have population between ten and twenty thousand while a notified area should have a population between five and ten thousand.

### *Improvement Trusts*

In certain important cities what are known as Improve

<sup>6</sup>For the United Provinces see Section 14 of the Local Act of 1916. For qualifications of candidates see Section 6 of the same Act. It may be noted that for a candidate it is necessary that he must be literate either in English or at least one of the vernaculars. He must be a person no subordinate magistrate or police officer and no person holding any place of profit in the gift or disposal of the Municipal Board can be a candidate.

ment Trusts have been constituted. The main purpose of establishing such a Trust is to make provision for the improvement and expansion of cities by opening up congested areas, providing open spaces or parks for ventilation or recreation, opening or altering roads and streets, demolishing certain buildings or constructing others. Improvement Trusts now exist in several cities, for example Bombay, Calcutta, Allahabad, and Lucknow. The affairs are administered by the Board of Trustees or the Improvement Trust Tribunal. These Trusts are connected with the respective municipalities and in Bombay particularly the Trust has been transferred to the municipality, that is, to the Municipal Corporation for the city of Bombay. These Trusts are doing or attempting to do useful work particularly from the point of view of health and sanitation and are rendering much needed service to the poorer classes who usually inhabit dirty or congested quarters and consequently suffer from various diseases.

### *Port Trusts*

In some of the important ports there are what are known as Port Trusts. Their function is the administration of affairs of the respective ports. These trusts have got wide powers<sup>7</sup> and some of them have large incomes. For example, the port trust of Calcutta has got an income of Rs. 2,88,29,623 and that of Bombay an income of Rs. 2,65,64,288 according to the figures of 1933-34. It may, however, be remembered that the Government exercises greater control over them than over the municipalities. Such trusts exist in Calcutta, Bombay, Madras, Rangoon, Karachi and Chut-

<sup>7</sup> But their proceedings are subject in a greater degree than those of Municipal Boards to Government control.

tagong There is also a Port Trust at Aden The trusts have Boards of Trustees, as in Bombay, Madras and Karachi or Commissioners, as in Calcutta Rangoon and Chittagong for their respective ports The commissioners or trustees include elected and nominated members In all the trusts there is a majority of European members and the Board of Madras consists mainly of European members

### *District Boards*

Municipalities and Trusts as described above function in the urban areas while District Boards and Local Boards or Union Boards function in the rural areas The District Board exercises jurisdiction over a civil district and in all provinces except that of Assam every district has a District Board The powers conferred upon and the duties entrusted to the District Boards are similar to those of the Municipal Boards in the cities, but in a smaller degree generally they have been less successful than the Municipal Boards The main functions of the Boards are construction and maintenance of roads establishment and maintenance of hospitals and dispensaries, sanitation and drainage, vaccination, and education specially primary education They are also in charge of ponds and ferries

### *Their Composition*

As in the case of Municipal Boards in the District Boards also the elective element is increasing and official control relaxing The Chairman of a District Board who used to be the District Officer is now usually elected by the Board itself and is a non official The nominated members are more in number in the District Boards than in the Municipal Boards Still their proportion is small and as regards

officials they are only 11 per cent of the total number for all Boards taken together

#### *Taluka Boards and Un on Board*

Within a district there may be sub divisions having smaller boards which are known as Sub divisional Boards or Taluka Boards Taluka Boards are found in the Bombay Presidency The District Board generally supervises the work of these Boards

There are again still smaller Boards which are known as Union Boards or Panchayats or committees The Union Panchayats are mostly to be found in Madras and are very numerous The Union Boards (or panchayats) are to be found in Bengal and Bihar and Orissa

#### *Number income and expenditure*

The total number of all District and Local Boards in British India is 1246 of which about 207 are District Boards 384 sub divisional or Taluka Boards and 455 Union Panchayats of Madras

The income of the Boards is made up of grants made by the Provincial Government land cess tolls and fees for ponds and ferries The chief items of expenditure are education civil works such as road and sanitation hospitals and dispensaries

#### *Government control*

Like the Municipal Boards the District Boards also form an important part of local self government which as a provincial transferred subject is administered by the Governor acting under the advice of his ministers The District Magistrate and the Commissioner also keep a control over these

boards Usually this control is exercised in sanctioning certain measures or appointments or issuing certain orders

*Village Autonomy*

As regards village the idea of local self government does not appear to have been acted upon so much in the modern times as in ancient and medieval ages The elaborate administrative organisation of the executive the judiciary and the police has resulted in removing in a large measure the autonomy enjoyed hitherto by the villages Previously the affairs of the village were administered chiefly by the village Panchayats or in some measure by the landlord of the village in the northern province<sup>3</sup> The Panchayats themselves might be divided into two classes one comprising caste Panchayats, and the other village Panchayats as such The former used to deal with such affairs as affected the rules of a particular caste They were mostly concerned with marriages, social behaviour, private conduct dining or certain religious observances The caste Panchayat could also punish the members of the particular caste for various offences The other kind of Panchayat dealt with civic matters

*Modern Panchayats*

In the modern times some sort of panchayat system has been seriously advocated and attempts have been made by various Governments to revive the village panchayats in some practicable form In the southern province panchayats have proved more successful In the northern provinces Acts have been passed providing some measure of

<sup>3</sup> The Southern Provinces do not have the system of zamindar and consequently have no landlords.

local self government for the villages. For example, the Village Court Act of the United Provinces of 1892, the Village Panchayat Act of the United Provinces of 1920, the Village Administration Act of Bihar and the Village Panchayat Act of the Punjab. In Bengal the Village Self Government Act was passed in 1919 as a result of which many Union Boards have been constituted and their number is largely increasing. The United Provinces Village Panchayat Act No. 6 of 1920 empowers the Collector of the district to establish a panchayat within and for any village or group of adjacent villages. The Collector appoints the Panches whose number for each panchayat must not be less than five or more than seven. All the Panches must be residents of the circle for which the Panchayat has been established. In each Panchayat one of the Panches is appointed by the Collector to preside over the panchayat. He is called the Sar Panch. Ordinarily the jurisdiction of the Panchayat extends over petty civil and criminal cases. For example they can try small suits for money due on contracts not affecting any interests in immovable property, or suits for recovery of moveable property. But the claim should not exceed twenty five rupees. In criminal cases the Panchayats can try offences of voluntarily causing hurt, assault or use of criminal force, theft of property whose value does not exceed rupees ten etc. etc. The maximum penalty which a panchayat can inflict is a fine not exceeding ten rupees or double the damage or loss caused. Certain panchayats may be specially empowered to exercise enhanced powers.

If panchayats become successful they can serve the double purpose of relieving the law courts of some of their work and of dispensing ready justice, specially as the parties and the witnesses will be less inclined or prepared to raise false

claim and make deliberately untrue statements. For while in the first place, the social and moral pressure will be more effective when the Court is in close proximity of the place where the cause of action arose and the members of the Court are well known to the parties and the witnesses, in the second place the truth of a case can be more easily ascertained by the local panchayat functioning at the place itself.

## *Education*

### *Importance*

The importance of education can hardly be exaggerated and though a famous English writer of the modern days has regarded education as the craze of the present age, the condition prevailing can hardly justify such an observation particularly in India. Whether from cultural point of view or scientific, whether for literary purposes or technical and professional, education is still badly needed in India. The presence of a number of unemployed educated young men may erroneously lead men to believe that we have had enough of education by this time. But a close study however of the situation will clearly reveal two important features of our education, which makes plain the clear absurdity of having really so little education and yet so much apparent superfluity. In the first place our masses are illiterate and education is confined to a few. In the second place the education of those few is either greatly limited within narrow lines or is often misdirected, so that what India needs today is on the one hand spread of education among the masses and on the other its proper direction and profitable distribution. The second aspect makes it necessary for the proper educational growth of the country that sufficient attention should be paid in the first place to the different branches of education, for example literary, scientific, industrial, technical and professional,

and in the second place to the different classes of people to be educated, for example, boys, girls, adults, labourer, the blind, the deaf and the dumb and so on. One has to admit that at present comparatively more attention is paid to literary than to other kinds of education and to the education of boys than to that of other classes. So that more attention has to be paid to the other less favoured branches of education and classes of people. This has led certain people to argue that literary education is no more needed in India. This however is a fallacious argument and though other branches require greater attention than has been so far devoted to them, literary education has a right to be encouraged, for a lack of it will not only hinder cultural progress but may also reduce the already extremely small percentage of educated persons, and as a matter of fact even as regards literary education certain important aspects of it have been more or less neglected, for example the study of Indian languages and culture. At any rate mass education is badly needed.

### *Ancient times*

We may cursorily cast a glance at the condition of education in earlier times, though we do not have sufficient data for arriving at very definite conclusions. In ancient times we note the prevalence of two important systems of education, the one Aryan or Brahmanic and the other Buddhist. According to the former one person used to be a centre and the guiding spirit of each institution. He was called the Guru. The students who were his Chelas or disciples went to him for receiving education. In principle the students had to live a life of prescribed purity upto a certain age. This stage was known as 'Brahmacharya Ashram'. Such Gurus

appear to have been found everywhere and for all people. The more famous teachers or great Rsis appear to have important institutions at their own residence where people from far and near used to gather for education, for example, the University, as we may call it, of Bharadwaja at Allahabad. Females also received education and the standard of education among them appears to have been so high that they could make certain Vaidic Mantras also and could debate with learned pandits of repute. So much stress was laid upon education and society was so conscious of its importance that the educated classes commonly known as the Brahmanas were regarded superior to all other classes and even the kings had to bow before them. It also appears that for promoting knowledge among the masses apart from the Gurus there were certain teachers usually known as 'Sanyasis' whose duty it was to spread knowledge among the common people.

According to the Buddhist system instruction was imparted to the people through the monastic establishments. The monasteries usually known as vihara or mahavihara (great vihara) or matha served both as churches and educational institutions. They were to be found in large numbers in the country and some of them contained really very able teachers of wide reputation. The bigger ones attracted students from far and wide and were very important centres of learning and can be aptly termed universities, for example the Nalanda Mahavihara or the Vikram Śīla Mahavihara. The former contained ten thousand students who received education free. The masses also appear to have been fairly educated and the presence of Aśoka's pillars in large numbers in the country with inscriptions intended for the use of the common people bears testimony to this.

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*Medieval times*

In medieval times the educational system appears to have undergone a change. As a common practice the richer families appointed a teacher for educating their children. Educational institutions as such for imparting instructions to the common people do not appear to have been common, but attached to certain religious establishments were also educational institutions. At least for a long time during the medieval age education appears to have suffered chiefly owing to political disturbances and also to introduction of a foreign culture with its foreign languages and foreign scripts, which could not easily prove congenial to the genius of the Indian people.

*Modern times*

During the modern times the problem of education has been carefully dealt with and the system of imparting education elaborately organised. Before however describing the system as obtaining at present it would be helpful to review briefly its history. We may note the important stages in the development of education under British rule in India. The first stage began with Warren Hastings in 1782 the second began with Lord Hastings in about 1816 the third with Lord Canning in about 1857 and the fourth and last began with the time of Lord Hardinge the Viceroy in 1913.

*The First stage*

In the first stage the Government did not devote any particular attention to education. However Warren Hastings was keenly interested in Indian literature and culture and he established in 1782 the Calcutta Madrasa for Mohammedans. A few years later in 1791 was opened the Sanskrit

college at Benares for the Hindus and the Government supported it. In 1813 the Government granted a lac of rupees for the purpose of education. During this stage the educational policy was the promotion and encouragement of Oriental languages and even in 1814 the instruction of the Court of Directors to the Governor-General indicated the same policy.

### *The Second stage*

In the second stage we find a remarkable change in the educational policy which now advocated promotion of western learning. It was in 1816 that the Hindu College was founded at Calcutta through the efforts of Raja Rām Mohan Roy helped by Mr. David Hare. In 1818 the first missionary college was opened at Srirampur in Bengal. Further colleges and schools were opened in various parts of the country. In 1835 an important step was taken by the Government of Lord William Bentinck and it was definitely decided that English should be the medium of education in preference to oriental languages. It may be remembered that this decision was arrived at through the efforts of Lord Macaulay the then Law Member of the Governor-General's Executive Council. He condemned oriental learning in a way which simply showed his ignorance and which cannot be regarded except as unjust. He failed to understand what one of his own countrymen, Elphinstone, observed that "It would surely be a preposterous way of adding to the intellectual treasures of a nation to begin by the destruction of its indigenous literature." While it is no use discussing the wisdom of that decision which was opposed even by some Englishmen like Horace Wilson and others, one cannot but remark that while the introduction of western learning has not been without its benefit to the country, "The ele-

mentary education of the people in their own tongue", to quote the words of Lord Curzon, "has shrivelled and pined"

Another important landmark was the education despatch of Sir Charles Wood, the president of the Board of Control, to the Governor General in 1854. The policy enunciated in this despatch is very important. In the first place it tried to educate the masses, declaring the Government's "desire to combat the ignorance of the people which may be considered the greatest curse of the country". It laid a great stress on primary education and was followed by the establishment of Departments of Public Instruction. In the second place it recognised the importance of the Indian languages and laid down that instruction in the English language "should always be combined with a careful attention to the vernacular language of the district and with such general instruction as can be conveyed through that language". In the third place it established the system of aiding private enterprise for promotion of learning by making grants in aid to private institutions. Before this the Government used to spend its available funds only on Government institutions. In the fourth place it outlined a scheme of a university system which bore fruits a few years later.

### *The Third stage*

This leads us to the third stage which began in 1857 with the establishment of the three universities of Calcutta, Madras and Bombay. The importance of this measure may easily be judged by the observation of Lord Morley that "I have often thought since I have been concerned with the Government of India that the first establishment of the universities was a far more momentous event and one almost deeper than the transfer to the Crown. Later on universities were established in the Punjab and at Allahabad in

1882 and 1887 respectively. In 1882 an Education Commission was appointed which recommended the policy of withdrawing Government control of higher education within certain limits and of stimulating private efforts. At the same time it advocated the system of making grants in aid to private institutions. Lord Curzon devoted great attention to educational matters. He appointed the University Commission in 1902, on the recommendation of which the Universities Act of 1904 was passed which tightened up the Government control over the universities and the university control over the schools and colleges. Further a Director-General of Education was appointed in the Government of India who is now called the Educational Commissioner with the Government of India. In 1911 a separate educational member was appointed in the Executive Council of the Governor General.

#### *The Fourth stage*

In 1913 the Government of India issued an important resolution which enunciated its policy as regards education. The result was a remarkable progress of education. In the first place it advocated the establishment of other and smaller universities which were to be teaching universities.<sup>1</sup> In the second place it laid down that proper attention should be paid to the formation of character of students. In the third place it discussed the need for the staffing of girls'

<sup>1</sup> Within this period a number of universities were founded. In 1916 the University of Benares was established and also the University of Mysore. Then Patna University was established in 1917 and Usmania University in the Hyderabad state in 1918. In 1920 were established the Universities of Aligarh, Rangoon and Lucknow. Later on Universities were established at Dacca in 1921, at Delhi in 1922, at Nagpur in 1923, and again in 1926, 1927 and 1929 were established the Andhra, the Anna and the Annamalai Universities respectively.

schools by female teachers. In the fourth place, for secondary education it laid down the principle of reliance on private enterprise. In 1919 the Calcutta University Commission published its report and in the beginning of 1920 the Government of India issued a resolution drawing special attention to certain features of the report. Various committees were appointed by other universities to consider reforms as, a result of which important reforms were made and new universities established.

### *Administrative organisation*

Since the Government of India Act of 1919 the administration of education has passed with certain exceptions<sup>1</sup> to that half of the provincial executive which administers the transferred subjects. Since 1923 the education department of the Government of India has been amalgamated with the department of revenue and agriculture and the new department formed is called the department of Education, Health and Lands. As noted above there is an Educational Commission with the Government of India.

In each province there is a department of education whose administrative head is called the Director of Public Instructions. He is responsible for the administration of education to the Local Government and acts as an adviser to the Minister of Education. The Government helps education in various ways. It maintains certain schools and colleges and

<sup>1</sup> There are two important exceptions. The one is the Education of Europeans which though a provincial subject is governed by the Reserved half of the Executive. The other is the administration of Chiefs' colleges institutions maintained by the Governor-General in Council for the members of His Majesty's forces and certain universities like Aligarh, Benares or Delhi or other new universities declared so be central subjects by the Governor-General in Council.

aids many others<sup>3</sup> It keeps an inspecting staff to control education, chiefly in schools Each province is divided into a number of divisions over each of which there is an Inspector of Schools who is assisted by Assistant and Deputy Inspectors There are separate inspectors for European schools or for special kinds of schools, for example Sanskrit schools Technical institutions are generally administered not by the Department of Education but by the Departments with which they are concerned The Government also controls private institutions by what is known as recognition, that is, it declares that such and such institutions are recognised institutions In certain provinces Boards of Secondary Education or of High School and Intermediate Education have been constituted and the universities have been relieved of the responsibility of Intermediate and lower education

### *Control*

An important question connected with educational policy is that of the control exercised by the Government over educational institutions At first the policy was that of complete control but the education Commission of 1882 under the chairmanship of Sir William Hunter recommended the withdrawal of higher education from Government control within certain limits and encouragement of private effort This policy however brought many evils in the system and particularly the Department of Public Instruction almost ignored the private institutions. Later on the Universities

<sup>3</sup> In this connection the Government of India's resolution of 1904 is noteworthy which said that while the Government accepted the policy of withdrawing its control as recommended by the Education Commission of 1882 it at the same time recognised the extreme importance of the principle that in each branch of education Government should maintain a limited number of institutions both as models for private enterprise to follow and in order to uphold the high standard of education

Act of 1904, passed on the recommendation of the Universities Commission, tightened up the control of the Government over the Universities and of Universities over the schools and colleges. Now the control of higher education is partly shared by the Government with the Universities or has been partly delegated to the Universities, while that of elementary and vernacular education is shared with and partly delegated to local bodies. Control is chiefly exercised by exercising the power of recognition of private institutions and having an inspecting staff. Government institutions are directly controlled and managed by Government through the Director of Public Instructions.

### *Universities*

The Universities as constituted in the beginning were merely examining bodies and they had no direct teaching functions. So that passing of examination and not learning came to the forefront and education tended to mean acquisition of degrees which were passports for Government services. A change was effected by the Universities Act of 1904 which permitted the Universities to undertake direct teaching functions, but in practice such functions became limited only to post graduate classes and research work. An important resolution of the Government of India in 1913 advocated the establishment of smaller teaching universities<sup>1</sup>. Then came the recommendations of the Calcutta University Commission in 1919. This had wide effects and though the Calcutta University itself, for which it was mainly intended, remained almost unchanged, important changes were intro-

<sup>1</sup> A teaching University has a teaching function as well as an examination function to students in various subjects by maintaining a staff of teachers usually called professors, readers, lecturers etc.

duced elsewhere Universities of a unitary type<sup>5</sup> were established in Dacca and Lucknow and Allahabad was also made a unitary university In several provinces Intermediate education was separated from university education and made a part of school education

At present out of the 16 universities existing in British India six, that is, those of Calcutta, Madras, Bombay, Nagpur, the Punjab and Andhra<sup>6</sup> are affiliating and teaching, two, that is, those of Patna and Agra are only affiliating, while four, that is, those of Allahabad, Benares, Rangoon and Delhi are only teaching, three, that is, those of Aligarh, Dacca, and Annamalai are unitary, while Lucknow is unitary and teaching The two universities of Mysore and Osmânia which are in the Indian States are teaching universities At the head of each university there is a Chancellor who except in certain places is the head of the provincial Government concerned Then there is a vice chancellor who is in certain places nominated by the chancellor and in others elected by a body of electors Then there is a Senate which is the Legislative body of the university In some of them there is a larger body called the university court Then there are various departments with their heads according to the faculties Some of the universities do not undertake the work of intermediate or high school education which have been delegated to separate Boards

It is to be noted that in recent years much attention has been given to the university system of organisation and many

<sup>5</sup> A unitary university is a teaching university in which the whole of the teaching is conducted and controlled by a staff of teachers maintained by the university It is usually confined in its territorial jurisdiction to one particular centre.

<sup>6</sup> An affiliating university is one which recognises external colleges teaching their students in courses of study prescribed by it Such colleges are called colleges affiliated to the university

changes have been effected

The total number of students in the 16 universities was 10,762 in 1934

### *Intermediate Colleges and High Schools*

Next to the universities come the Intermediate colleges and High Schools. In some provinces Intermediate classes are included in the university, while in others they are separated from them. In the latter case a Board controls them. In the United Provinces the Intermediate and High School education is controlled by the Board of Intermediate and High School Education. The Director of Public Instruction who is the administrative head of the Education Department in the province directly controls the education of lower classes and in most provinces of all High School classes. Indirectly however he keeps some control over all education, being a member of the university governing authority or the chairman of the Intermediate and High School Board.

The Government directly maintains and controls certain institutions in order to uphold a high standard of education as also to furnish models for private enterprise. Usually there is such a High School in every district.

An important improvement as regards medium of instruction in schools is the approval by certain Local authorities of schools which recognise local vernaculars as media of instruction and examination in some of the subjects taught, and though the discussions of the conference in 1917 at Simla under the chairmanship of the Education Member of the Government of India proved inconclusive, the tendency to use the vernaculars as media of instruction and examination is growing.

*Primary Education*

During the recent times much attention has been given to primary education and it has been definitely understood that the idea that the policy of giving higher education would naturally lead to wide spread mass education is erroneous. In 1911 the late Mr Gokhale pleaded in the Imperial Legislative Council for a system of compulsory education in primary classes, but the proposal was not accepted by the Government chiefly for financial reasons. Now however the Legislative Councils of various provinces have passed Primary Education Acts<sup>7</sup> which empower the local bodies to introduce a system of compulsory primary education. Generally where education is compulsory it has also to be free<sup>8</sup> with certain exceptions. In Madras under certain circumstances fees may be charged. Compulsion is exercised usually between the ages of 6 and 10 years. In some provinces the Act applies to both boys and girls as in the United Provinces, or Bombay, while in some as in Bengal or Bihar and Orissa it applies only to boys, and in the Central Provinces it can be made applicable to girls also. Usually the several Acts apply to Municipalities alone, but in Bengal the Act can be extended to rural areas also and in the United Provinces a separate Act known as the United

In Bombay the first Act was passed in 1918 followed by other Acts in 1920 and 1923. The provinces of Bihar and Orissa the Punjab, Bengal, and the United Provinces passed their Acts in 1919, the Central provinces and Madras followed in the next year and Assam in 1925. The United Provinces passed a second Act in 1926.

<sup>7</sup>It is pleasing to note that while education is not free in British India except where it is compulsory in the Indian States we find in many places even secondary and college education free. For example Patiala maintains a first grade college imparting free education to state subjects. Primary education is free throughout the state. In Kashmir education for boys has been made compulsory in the Municipal areas from 1929.

Provinces District Boards Primary Education Act was passed in 1926 for rural areas. But we observe that very little progress has been made in this direction by the Local Bodies. One of the chief causes of their slow progress is their poor financial condition. Another important cause is the lack of popular support. However, primary education is growing and according to the statistics of 1934 there are over two lakhs (2,00,924) of recognised primary schools in British India containing over 98 lakhs (98,06,316) of students. Primary education is chiefly in charge of local bodies, i.e. the Municipal Boards and the District Boards and the Government controls it through its inspecting staff.

### *Literacy and Educational statistics*

It may be useful at this stage to give a few figures in this connection about education. As has been often said very few people in India are educated. Even literacy is very low, though it is progressing. About 50 years back it was less than 4 per cent, in 1921 it was roughly 7 per cent, about 10 years back it was 8.2 per cent and now it is about 9.5 per cent of the population excluding children under five years of age.<sup>9</sup> Among males the percentage is much higher than among females. Parsees give the highest percentage of literates i.e. 79.1, Jews 41.6, Jains 35.3, Christians 27.9, Sikhs 9.1, Buddhists 9.0, Hindus 8.4, Mohammedans 6.4 and so on. Territorially the highest percentage is in Burma<sup>10</sup>, then in Cochin, Travancore and Baroda in order. As for English, literacy

<sup>9</sup> A literate person is one who can write a letter and read its reply.

<sup>10</sup> The highest percentage of literacy in Burma is due to the prevalence of Buddhist system of education. Every village has got at least one monastery in which both boys and girls are taught. So that literacy has become a common habit traditional among all classes of the people both males and females.

in that language extends only to 12.3 per cent, that is, 21.2 per cent among males and 2.8 per cent among females, excluding children under five years of age. Territorially the highest percentage is in Cochin, then in Coorg, Bengal and Travancore in order.

In the year 1930-31 the number of scholars in all institutions in British India was 1,26,89,086, which rose to 1,31,72,890 in 1934. Of these the numbers of female scholars were 23,75,593 and 27,55,051 respectively. It is noteworthy that in all the professional and technical or industrial institutions in British India taken together (including normal schools and training colleges) the number of scholars is not even one lakh being only 94,610 in 1931, and only 90,513 in 1934 and excluding the training colleges and normal schools the numbers were only 60,987 and 61,560 respectively. The number of training colleges and normal schools was alone 762 in 1931 and 604 in 1934 and the number of all the other institutions 741 and 725 respectively.

It may be remarked that in British India as a whole the percentage of scholars to population has been varying as follows —

Scholars	1929-30	1930-31	1931-32	1932-33	1933-34
Total	5.06	4.67	4.70	4.73	4.85
Males	8.07	7.36	7.33	7.32	7.44
Females	1.88	1.80	1.89	1.98	2.09

The percentage in Madras is highest being 6.5, in Bombay 6.3, in Bengal 5.92, in the Punjab 5.43 and so on, while in the United Provinces it is only 3.2 and in the Central Provinces 3.11. It is lowest in Bihar and Orissa being 3.1.

As regards cost of education it may be remembered that the annual average cost per student amounted in 1929-30

to Rs 23/4/0 and in 1933 34 to Rs 20/15/3. The total expenditure in 1933 34 amounted to Rs 26,17,65,186. Of this total cost the Government contributed 43.8 per cent, the fees amounted to 24.8 per cent, the Municipal and District Boards contributed 16 per cent and the rest 15.4 per cent came from all other sources.

### *Students outside India*

There are also a number of Indian students pursuing their studies in foreign countries. Sometimes the Government gives state scholarships for training of students in certain subjects. The subjects of study in foreign countries are usually industrial, connected with training of teachers, law, and general subjects for higher academic degrees. The Government also trains in England certain classes of candidates for services like the Indian Civil Service, the Indian Medical Service etc etc. The foreign countries to which students usually go are Great Britain and Ireland, the United States of America, Japan, Germany, and some other countries of the European Continent. Statistics of 1930 31 show that of the students reading in foreign countries 1849 were educated in England, Wales, Scotland, and Ireland, 201 in the United States of America and 5 in Germany, 4 in Switzerland and 1 in Austria the total being 2106. The number has declined since then and according to the figures of 1932 33, the total number was only 1858 distributed as follows: Great Britain and Ireland, 1591, America, 152, Germany, 82, France, 22, Austria, 5, Switzerland and Italy, each 3.

### *Special, professional and technical education*

Apart from institutions for general education there are various schools or colleges for imparting education to

special classes of students or in special subjects. But they are so few in number that there is a great rush for admission in some of them and a further increase of such institutions is badly needed. As in case of general institutions these also are sometimes maintained by Government, sometimes by local Boards and sometimes by private persons or body of persons.

Special training is also given for military work in the Indian Military Academy and in the Prince of Wales Royal Indian Military college both at Dehra Dun. There are also special colleges for the education of princes and their relations. They are five in number at present situated in Ajmer, Indore, Lahore, Rajkote and Rajpur.

Among professional institutions may be mentioned the various law colleges and the various medical colleges and schools like those in Calcutta, Lahore, Lucknow, Agra etc. or those intended for the progress of indigenous systems as in Benares or Delhi.

Technical education is still sadly lacking in India. Recently however there has been considerable progress in this direction. The students are taught in various institutes sciences, arts, and crafts like engineering, medicine, agriculture, sculpture, painting, iron work, gold and silver work, carpentry, architecture, wood carving, pottery, dyeing etc. etc. Among industrial and technical institutes may be mentioned the following — (1) The Institute of Agricultural Research at Pusa in Bihar, the Imperial Council of Agricultural Research at Delhi and the Agricultural College at Naini near Allahabad, and Forest colleges at Dehra Dun and Coimbatore (2) The Indian Institute of Science at Bangalore, the Victoria Jubilee Technical Institute in Bombay, the Government Technical Institute at Cawnpore, dyeing and printing schools as in Cawnpore and institutes for training in leather, carpentry,

textile, pottery, iron work etc (3) Engineering colleges at Roorkee, Benares, Sibpur, Poona, Madras etc and other Engineering schools, (training is given in civil, mechanical and electrical engineering also) Mining and Metallurgical college at Benares and Mining School at Dhanbad (4) Commercial colleges as in Bombay and Cawnpore

### *Special institutions*

A very important side of education is the education of those who are incapable of receiving education in the ordinary way, for example the education of those who cannot attend the school during ordinary school hours or those who are blind or those who are deaf and dumb For the education of the first mentioned class of people night schools have been opened at certain places For the second class of people there are schools particularly in Madras and Allahabad For the third class of people there are Deaf and Dumb institutes particularly in Calcutta and Allahabad

Among the special institutions may also be mentioned firstly such institutions as Santa Niketan Sir Rabindra Nath Tagore's school at Bolepur or the Gurukul near Hardwar and the Ayurvedic and Unani Tibbia college

Another class of special institutions is that of the Chiefs' colleges which are five in number and are intended for the education of sons and relatives of the princes and the chiefs

### CERTAIN PROBLEMS

Education has been presenting very serious problems particularly in India, for example, the medium of education, the organisation of universities and so on At present however some of these problems have been solved but new problems are constantly arising In this place we shall

consider a few of the chief problems connected with the subject of education

### *Female Education*

To educate Indian women is not an easy task because in the first place the custom of *Pardā* prevents them from moving in society, in the second place their shyness prevents them from mixing with men and in the third place the poorer classes, among whom the above two causes are not working, cannot afford to educate themselves or their children. Early marriage may also be regarded as an obstacle in the many. However, progress is being made in this direction and various schools and colleges have been opened for females<sup>11</sup> in which mostly female teachers are kept but in many places in the primary classes and again in the universities both boys and girls are taught together. This system is known as co education and though it has the advantage of economy on the one hand and of training boys and girls together on the other, it has the great disadvantage of giving the same kind of education to both boys and girls who as a rule ought to be educated on different lines and in different courses of study except of course to a limited extent. This aspect of education still demands a serious attention but it is gratifying to note that in girls' schools provision is often made for teaching special subjects, suited for females, for example the domestic arts. Still as a matter of fact female education needs great encouragement. The Government have also made provisions for training of women teachers for vernacular schools. They also have

<sup>11</sup> There is also a private university known as Shreeamati Nathibai Damodhar Thakersey Indian Women's University. Much useful work is being done in the direction of female education by the All India Women Conference on Educational Reform.

separate lady Inspectresses for girls schools. There are two specially noteworthy colleges in Delhi: the one is the Lady Hardinge Medical college for women and the other is the Lady Irwin college serving as a central teachers training college.

### *Poverty of the people*

The poverty of the people is a great drawback in the spread of education. Most people are simply unable to educate their children, whether boys or girls. Though poverty of the people cannot be easily removed, education could be so organised as to afford ample opportunities to all for educating their children. No doubt students are granted scholarships and certain students are educated free, still much remains to be done and some of the Indian states have set the noble example of giving education free not only in primary and secondary classes but even in colleges too, for example Patiala. Certainly education is a thing on which much more attention should be bestowed.

### *Physical training*

We often find that the educated people are less healthy than the uneducated people. It has to be admitted that very little attention was formerly paid to the health of the students, but now however various means have been adopted for securing better health for the students. They take drill courses, they play games, and take part in various sports and are encouraged to cultivate active habits. They are also taught hygiene and are subjected to frequent medical tests.

In order to provide some military training also to the students the University Training Corps has been organised which affords opportunities for good physical training.

*Boy Scouts and Girl Guides*

Closely connected with the subject of physical training and discipline is the scouting movement which so far as the boys are concerned is called the Boy Scouts Movement and so far as the girls are concerned is called the Girl Guides Movement. The latter though making some progress has not yet become quite popular. But the boy scouts are large in number and doing useful work in almost all the provinces. There are two very important associations of scouts. One is that of the Scouts of the Baden Powell System which is the official system, the other is that of the Seva Samiti Scouts, doing useful work. They render important services in managing crowds and are thus a help to the Government police force also.

*Character and Moral Training*

It has to be noted that formation of character and development of sound morals form an important part of a young man's or woman's education. It is with this view that the ancient Indian system inculcated a definite and prescribed mode of life upon the students. In these times however little direct effort is made for the development of sound character, though as a matter of fact this aspect of education demands serious attention, for education should be essentially educative and not merely informative. There is a feeling abroad that the present system of education in India is not conducive to character building. Certainly it needs much reform. Moral and religious instruction is regarded as a means of promoting good moral life but the British Government in India, unwilling to interfere with any body's religious views and beliefs or to impose any convictions upon any person, refrains from providing any religious education but mission

ary institutions do give some religious training though it is not much availed of by the students. Certain other institutions also impart religious education but they are not many in number. As a matter of fact the best way of developing good character among the boys and girls is to set before them the best example, for example is always better than precept. The selection of teachers must be very careful and they should be required to mix with the boys freely and see that they live good lives. Secondly the courses of study should include biographies of persons of high and noble character and stories of noble deeds and should not include licentious literature.

It may be remarked that educational experiments in foreign countries lead one to believe in the efficiency of education imparted in a home atmosphere. In India it will be found easier to create such an atmosphere particularly because the joint family system itself is a long step towards it. Hostels have been opened for most of the schools but they need important improvements.

### *Enterprise.*

The question of enterprise is also very important. There are three bodies to be considered. First of all there is the Government. The Government ordinarily maintains a few institutions to serve as "models" and to "uphold a high standard of education" to quote the words of the Government of India's resolution of 1924. Generally every civil district has a Government High School. To most other institutions the Government grants aids. Then there are the local bodies, that is, the Municipal Boards and District Boards to be considered. They maintain almost all the primary schools within their respective areas including also vernacular schools.

of higher standards In certain places they maintain institutions of higher grades also, for example, High Schools Lastly we have to consider private enterprise A large number of schools and even colleges are maintained by private persons or associations, for example the various missionary societies or other Indian religious or other societies

## *The Indian States*

### *Importance of the subject*

There is no denying the fact that with the time of times greater interest is being taken in the problem of the Indian States. Political awakening in the country as a whole has brought to the forefront many questions which had either not arisen before or had been left unresolved or only partially solved. Again the growth of international and interstate relations has made it impossible for any state to remain isolated or afford to neglect outside opinion. The growth of economic interdependence has also tended to produce the same state of affairs. Therefore as a result of various forces the subject of Indian States has assumed great importance and in view of the provision made by the new Government of India Act of 1935 for a federation of India including the states a study of this subject has become still more important.

The Indian states form a considerable part of India and for some time past they have been collectively called Indian India as distinguished from the other part known as British India. Both from the view of area and population they can make up in aggregate a fairly big country. They cover an area of 7,12,508 square miles, that is over 39 per cent of the total area of India which is 18,08,679 square miles. Their aggregate population is 8,13,10,845 that is over 25 per cent of the total population of India which is 31,28,17,778 and

forms nearly one-fifth of the population of the whole world. This also increases their importance.

### *The Chief Questions*

Among the chief questions which a study or description of the Indian States involves may be mentioned the following — Their foreign relations and external policy, their internal administration, their relationship with the Paramount Power, their position in India and Indian administration, their position in the Empire and in the world at large, and finally in the states themselves the relationship between the rulers and the subjects.

### *Difficulties of Treatment.*

Having in view the questions mentioned above any treatment of the subject of Indian states is necessarily attended with numerous difficulties. The states number in all about 700 and no uniform treatment of them can be attempted, for they differ from one another in many respects. The difference in size is so great that while Kashmir covers an area of 84,258 square miles certain states do not extend beyond 20 square miles and certain others are little more than small holdings. In the matter of revenues also the difference is equally great, for while Hyderabad has a revenue of about 8 crores and 74 lakhs of rupees, certain states have got a revenue amounting not even to half a lakh of rupees.<sup>1</sup> Similarly is the case with population.<sup>2</sup> Again the status

<sup>1</sup> For example, the state of Lawa in Rajputana has an area of 19 square miles and a revenue of about 50 000 rupees and the Wadi Estate in the Deccan State Agency has an area of 12 square miles and a revenue of 8 000 rupees.

<sup>2</sup> Hyderabad has a population of 14,512,161 and Wadi Estate of 1704 only.

and powers enjoyed by the states also differ very widely in different cases. These depend not merely on the terms of the treaties which were entered into between the East India Company and the states but also on the nature and extent of interference which the British Government may from time to time exercise in the case of particular states. The treaties themselves differ very much from one another as the conditions under which they were made differed in different cases.

As regards their administration also the difference is a marked one. While certain states are administered almost in the same manner and with the same efficiency as British India, others differ in different degrees. In some of them people have a voice in the administration and can get their grievances redressed in the ordinary constitutional manner, while in some they have little voice.

On account of these differences it is not possible to give any account of the states which may apply to all of them. For this reason the subject will be treated only in a general manner with particular references where necessary and examples of variations from the general account will be given as occasion demands.

With these observations the questions described above will be treated in order.

### *Foreign Relations and External Policy*

As regards foreign relations and external policy the states may be said to have no control over them. Though in certain cases, especially in the treaties entered into by Lord Wellesley, the states were regarded, according to the terms of their treaties, as equals of the East India Company, gradually it so happened that all the states lost control over their foreign affairs. At present they cannot declare war or make

peace or enter into other relations with any power, nor can they have dealings with other states. In their relations with foreign powers and other states it is the Paramount Power that acts for them. Again when any dispute arises between two or more states they must refer the matter to the Paramount Power.

### *Internal Administration*

In the matter of internal administration the states are in theory sovereign, that is, the rulers are free to administer their territories as they like. The treaties which were concluded between the states and the East India Company were clear in this respect and the Company almost in all cases disclaimed interference in internal affairs. Only in a few cases the treaties required that the princes should receive the advice of the British Resident. The stipulations of the treaties securing full internal sovereignty to the states were also in effect reiterated by British Administrators and Statesmen<sup>2</sup>. However, Lord Canning declared in his minute of 1860 "that the Government of India is not precluded from stepping in to set right such serious abuses in a Native Government as may threaten any part of the country with anarchy or disturbance." He also made it clear that in such cases apart from ordinary interference the Government of India may also assume temporary charge of a state if there be sufficient reason to do so. So that in practice we find that the British Government has from time to time interfered with the internal administration as occasion arose.

<sup>2</sup> In this connection the Proclamation of Queen Victoria made in 1858 may be remembered which said that no encroachments would be allowed on the rights and dominions of the princes. The Queen made it clear that we shall respect the rights, dignity and honour of the Native princes as our own.

and has sometimes actually gone to the extent of deposing a ruler and installing his heir in his place or even assuming temporary charge of the state itself. However as a general rule the British Government scrupulously respects the internal authority of the rulers.

This deviation in practice from the still unaltered terms of the treaties has mostly been the natural result of conditions prevailing in the states. Sometimes the treaties themselves were capable of various interpretations. Considering this state of affairs Dr. Mohan Singh Mehta observes that "The basic principles of the Company's engagements with the states were incompatible, if not illogical."<sup>4</sup> But there can be no clear definition of this interference and the princes have been complaining of the gradual encroachment upon their rights. They demand a clear definition of their status in terms of their treaties which they think are sometimes not respected by the British Government. As a result of the agitation the Butler Committee was appointed to report on the matter but its report was not satisfactory to the princes. It may be remembered that the Committee itself could not arrive at a formula which could cover the exercise of paramountcy in this matter. In practice the Government of India interferes in different degrees according to the necessity, of which the Government itself is the sole judge. Speaking in 1909 Lord Minto laid stress on the minimum of interference with the states in their own affairs. But as regards dominions the British Government has not interfered since the Queen's proclamation. On the other hand it has sometimes been very liberal, for example, in restoring the state of Mysore to its old ruling family in 1881 or in granting ruling powers to the Maharaja of Benares in 1911.

<sup>4</sup> Lord Hastings and the Indian States. Page 240

*General Conduct of Administration*

Ordinarily the states have their independent administration within their territories. This administration varies in different degrees in the case of different states, for which there are two chief reasons. In the first place the powers of administration exercised by states are not the same in all cases and in the second place the mode of administration itself differs in different states.

As regards the first we may notice various gradations from full sovereignty to mere shadow of authority. For example, Hyderabad has its own currency consisting of gold and silver coins and of notes. It has also its own postal service and stamps. Again as regards judicial administration certain states have got High Courts of their own. On the other hand some smaller states enjoy very little power.

Ordinarily the states have all the paraphernalia of administration, that is, they have military and police forces, jail executive, judiciary and so on. They have also their own laws and carry on other departments, like forest, health, education, sanitation etc. In certain cases they have their own railways also. As a matter of practice and for the sake of convenience they usually model their administration on the lines of British administration, and though they have the right to make independent laws for their subjects, they mostly see that their laws conform to the laws of British India as far as possible. The gradation of their courts also is very much like that in British India. Generally there is more uniformity in the criminal law and procedure than in civil and much more so than in revenue or tenancy law and procedure.

Some states have got Legislative Councils also and as we have seen in connection with woman suffrage

certain states are very much advanced in that respect<sup>5</sup> In the matter of education also some states have shown remarkable progress, both in the matter of literacy and encouragement of education<sup>6</sup>

The ruling prince is the chief executive judicial as well as legislative authority in his state and he takes an active part in the administration The highest officer below him is in many places called the Dewan or Diwan who is often the president of the executive council of the state when such a council exists

We shall now see in brief the constitution of the four premier states, namely Hyderabad Kashmir Mysore and Baroda All of these have got their own High Courts They have also got Executive Councils In Hyderabad the Council has a President and other members in charge of various departments in Mysore it consists of the Dewan and two members of Council In Baroda also the Dewan is the President of the Council As regards the legislature, Hyderabad has a Legislative Council of 20 members with an official majority and Kashmir has a State Assembly with a non official majority Baroda has a Legislative Department under a Legal Remembrancer which is responsible for making laws and has also a Legislative Council Mysore has two Houses the one is called the Representative Assembly and the other is called the Legislative Council the latter consisting of 50 members with a non official majority of 30

As regards the military force the paramount power prescribes and limits its strength As a matter of fact the states have no occasion to defend themselves from outside

<sup>5</sup> See page 85 above

<sup>6</sup> See pages 310-311 note 313-14 above

aggression, for the paramount power protects them from such aggressions. But there are two uses of maintaining such a force, the one is for display and the other for service to the Imperial Government in cases of need.<sup>1</sup>

### *Relationships with The Paramount Power*

This is a very debatable subject and the relationships of the states with the Paramount Power are in many respects better understood than defined. This subject has many aspects. First of all there is the question of the Paramount Power, that is, whether the Crown or the Government of India is the suzerain. The treaties with the states were entered into by the East India Company whose powers were taken over by the Crown. Thus the Crown became the suzerain power. But though this may be the legal or theoretical position, in practice the states are not allowed to deal with the Crown directly. So that for practical purposes it is the Government of India that exercises the powers of Suzerainty. But it must be remembered that the Governor General as viceroy represents the Crown in India.

*Under the Federal constitution of India as planned by the Government of India Act of 1935 the powers connected with the exercise of the functions of the Crown in its relations with the states shall, if not exercised by His Majesty, be exercised only by His Majesty's Representative or by the persons acting under his authority. This Representative will be appointed by His Majesty and may be the same person as the Governor General.*

Then there is the important question of exercise of paramountcy, that is, how and in what cases is this exercise made

<sup>1</sup> Services rendered by the states are very valuable. In the last Great European War some of the princes e.g. the Maharajas of Patiala and Bikaner went in person to the battle field apart from sending troops and money.

or felt. To understand this we may notice the following points —

1. In the external relations of the states or in inter-statal matters the Paramount Power is all in all. It regulates all these relations and has left no independent authority to the states. It also decides the disputes arisen between them.

2. In the matter of internal administration the Paramount Power usually respects the authority of the rulers and does not concern itself with their affairs. But in cases of gross injustice threatening the peace of the country or in cases of gross misrule or for other sufficient cause of which the sole judge is the Paramount Power itself, it does take steps to set matters right. This may be done by remonstrance or giving advice to the particular ruler concerned and putting the necessary pressure on him to carry it out, by getting some officer appointed in the state who will carry out the necessary measures, by deposing a prince or making him abdicate and installing his heir in his place, or finally by assuming charge of the state itself<sup>3</sup>.

3. The Paramount Power protects the states from all outside dangers and also undertakes to secure the rulers in their possession. So that when the peace of any state is threatened even on account of riots or disorders the Paramount Power intervenes to set the matters right. The states in turn help the Paramount Power in times of need with men and money and the rulers themselves often fight for it. The military strength and armaments etc. of each

<sup>3</sup> The Gaekwar of Baroda was deposed in 1871 for notorious misconduct and gross misgovernment. His Highness Maharaja Tukoji Rao III of Indore had to abdicate in favour of his son. The Maharaja of Nabha separated himself from administration and the Paramount Power assumed control of the state only a few years back. Sometime after he was deprived of all powers and his eldest son was recognised as Maharaja.

state are prescribed by the Paramount Power.

5 The suzerain power is the general guardian of minor princes. So that whenever the ruler of a state happens to be, minor, the Government of India manages for the education of the ruler and for the administration of his state. Generally in such cases a council with a president is appointed to carry on the administration.

This question of minority administration is a very thorny one and the part played by the suzerain in this matter is often resented. But the Government of India are definite in their attitude and in 1917 they issued a declaration asserting their role as trustees and custodians of the rights, interests and traditions of a state during a minority. They, however, promised to attach due weight to requests made by individual ruling princes or chiefs regarding any principles they might wish to be adopted in case of their own states or families.

6 The British Government maintains and controls colleges for the education of the princes and their relations.

7 As suzerain power the British Government at the time of succession or investiture gives a recognition of the succeeding ruler. In the case of a direct natural heir, as announced by Lord Chelmsford in 1917, this recognition is only formal and the obligation to obtain it does not impair the inherent right to succeed.

When there is no direct heir to succeed a ruler, an heir can be adopted and almost all states possess the right of adoption.

8 The Paramount Power receives tributes, which vary in amount according to the circumstances of each particular case, from many of the states, as for example, Benares, Jaipur, Travancore etc. Certain states also receive tributes from certain others, for example, Baroda receives tributes from a

number of states of Kathiawar

The suzerain power also receives what is known as nazar. But now the occasions of receiving nazars have been very much limited in view of the announcement made by Lord Reading in 1921 that His Majesty had been pleased to dispense with the presentation of nazar on ceremonial visits or receptions either to himself or to members of his family or to his officers to whom it had been customary to present them except at installations and investitures.

### *Position in India and Indian administration*

So far the position of the states in India and Indian administration is marked by an important degree of aloofness. The rulers as well as their subjects are free from the control of the laws of British India\*. The states are also free to levy their own customs and can freely trade with British India. Only in cases of maritime states are certain restrictions imposed.

The rulers of the states are honoured in British India. They are entitled to a prescribed number of salutes according to the states of which they are rulers and they are also sometimes entitled to personal salutes. The highest number of salutes is 21 for the rulers of Baroda, Gwalior, Hyderabad, Kashmir and Mysore. In 1899, while speaking at Gwalior, Lord Curzon claimed the rulers of the states as his colleagues and partners in the administration of the country. The subjects of the states can also be admitted like British subjects to most of the public offices in British India.

\*In case of criminals who commit offences cognizable by British Indian Courts and escape to a state the state authorities are bound to hand them over but the British Indian Police cannot arrest them without the permission of the state.

The princes are protected by special legislation from sinister propaganda etc for example the Indian States (Protection Against Disaffection) Act of 1922

*But now the states will be in closer contact with British India and its administration* As provided by the Government of India Act of 1935 the Federation of India to be established shall include those of the Indian states which have acceded or may accede later to the Federation For the purpose of accession the ruler of the state acceding shall execute an instrument known as the Instrument of Accession, in which he will authorize the exercise by the federation authorities, only for the purpose of the federation, of all such functions as may be vested in them by or under the Act He will specifically mention the matters with respect to which the Executive or the Legislature of the Federation may exercise its power and will also specify the limitations to which such exercise of functions may be subject

The Governor General will have special responsibility for the protection of the rights of any Indian state and the rights and dignity of its ruler

As regards the exercise of executive authority, it will remain vested in the federated state except in so far as it is excluded by virtue of a Federal Law

As regards legislation, the Federal Legislature can make laws for a federated state in accordance with the Instrument of Accession of that state and subject to any limitations contained therein A Federal law which extends to a federated state shall supersede any law made by the state which may be repugnant to the federal law

It has also been specifically provided that the executive authority of a federated state shall be so exercised as to secure respect for the laws of the Federal Legislature applicable to the state

As regards judicial administration, the authority of the Federal Court shall extend over the federated states Under certain circumstances the Federal Court has original jurisdiction in disputes in which a state is a party It can also hear appeals from High Courts

*in federated states in certain cases. Such an appeal shall only be by way of special case to be stated by the High Court concerned for the opinion of the Federal Court. To certain extent appeal is allowed by the Federal Court and by an judgment of the Privy Council is made binding on federated states also.*

*All authorities, civil and judicial, of the Federated States as also of British India shall act in aid of the Federal Court who has power, as respects both British India and federated states, to order attendance of any person or production of any document etc.*

*[As regards the constitution, composition and procedure etc of the Executive, the Legislature and the Judiciary of the Federation the reader is referred to Chapter V on Central Administration.]*

*The Act has provided that subject to the provisions of the Instrument of Accession of a Federated State the rights and obligations of the Crown in relation to the states remain unaffected.*

*Position in the Empire and the world at large*

Theoretically most of the states are allies of the Crown. So that their status is very high. But practically it is much lower as is clear from the powers exercised by, and the control placed over, them. With the inauguration of the Federation their position will perhaps be lowered still, because they will remain federated units of the Government of India like other provinces of British India and will be subject to its authority.

Again in world affairs they cannot be recognised as independent states or sovereign powers. They have no foreign policy or relations of their own.

But though the states as such have little international importance, the rulers of some of these have displayed remarkable qualities and have acquired international fame. For example, the Maharajas of Patiala and Bikaner have earned wide reputation in taking part in world affairs. In the Great

War<sup>10</sup> and after, in the League of Nations and in various international bodies the Indian representatives including certain rulers of the Indian states have played important parts and rendered valuable contributions

The formation of the Federation will give wider opportunities to the Princes to earn a name for themselves

### *The States and the r Subjects*

The inhabitants of a state are the subjects of its Ruler. Ordinarily a Ruler commands great respect in his state and is sometimes greeted by his people with demonstrations of Ārti etc. The subjects usually pay him the homage due to a Rājā from his prajā according to the Dharmasāstras. But with the change of times people have begun to be conscious of their grievances against the administration. Various forces have combined to produce discontent in the minds of the people. The growth of constitutional government in British India, the spread of education in the states, the prevalence of the ideas of democracy and popular representation have all roused the minds of the slumbering people. At the same time the personal relations subsisting between the Rulers and their subjects are gradually vanishing and the people now look upon their Ruler merely as an administrator. The Rulers themselves, often educated in English atmosphere and sometimes in England, do not inspire the same confidence in their subjects as the Ruler who lived among his people and almost as one of them.

As a result of all this we find an agitation in the states for grant of popular control over the administration. The

<sup>10</sup> It will be remembered that in 1919 England was stirred by the telegram which the Viceroy sent reporting that the rulers of states about 700 in number with one accord rallied to the defence of the Empire and offered their personal services and resources of the states.

people gather in conferences, as for example, the States People's Conference and demand rights and privileges. In response to their demands or to secure better government some of the states have associated their people in the administration in various degrees.

It is noteworthy that under the Government of India Act of 1935 the seats reserved for the States in the Federal Legislature are to be filled by persons appointed by the Rulers of the States and not elected or chosen by their people. This further produces discontent among the subjects of the States.

### *Political Officers*

As noted earlier in the chapter on Central Administration the relations of the Government of India with the Indian States are looked after by the Political Department under the direct and personal supervision of the Governor General himself. The officers through whom the powers of the Government are exercised in this matter are known as Political Officers and it is they who form the channel of communication between the Government of India and the Indian States. In the larger states there are Residents, as for example in Baroda and Hyderabad. In the Agencies, e.g. the Rajputana Agency, there are Agents to the Governor General. These Agents are assisted by local Residents, as in Udaipur and Gwalior, or by Political Agents as in Bhopal. In the states under Provincial Governments the larger ones have Political Agents and in the smaller ones the Collector or the Commissioners discharge the functions of the Political Agents. For Provincial States the Governor of the province is usually himself the Agent to the Governor General. But the Madras Presidency has five states each of which has an Agent to the Governor General.

The political officers keep the Government informed of

the affairs and administration of the states. They are also expected to assist and advise the rulers in any administrative or other matters on which they may be consulted.

### *The Chamber of Princes*

We have seen above<sup>22</sup> how and when the Chamber of Princes or the Narendra Mandal was inaugurated. It is composed of the rulers of major states who are members of the Chamber and the representatives of groups of smaller states. The chief officer of the Chamber is called the Chancellor who is selected by the members themselves by vote. There is also a Pro-Chancellor selected in the same manner as the Chancellor to act for him when he is absent out of India. The Chamber has again a Standing Committee whose members are selected by votes. This committee considers the subjects to be discussed at the meetings of the Chamber.

The Viceroy himself is the president of the Chamber, which meets once a year and considers questions submitted to it concerning the Princes, their rights and privileges and position in the imperial affairs. Its proceedings which were formerly held in camera have since 1929 been made generally open to the public.

It must however be remembered that the Chamber is merely a recommendatory body. Still it affords to the Princes a unique opportunity of discussing their affairs, expressing their views and increasing their weight in the country and in the imperial affairs.

### *The Future*

The future of the states will very much depend upon

<sup>22</sup> See pages 91-92 above.

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the working of the Federal Constitution. But it is clear that, while losing in certain degrees their autonomy, the states will gain in weight and importance and their rulers will find unprececedented opportunities of proving their worth and showing their capacity. They will no more remain separate entities but will become parts of a larger whole having a recognized international status.

## *Supplement*

### *Commencement of the Act of 1935*

The Government of India Act 1935 provided in Section 477 that part II of the Act, that is, the part relating to the Federation of India "shall come into force on such date as His Majesty may appoint by the Proclamation establishing the Federation" and "The remainder of this Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint."

### *Commencement of certain provisions*

By an Order in Council entitled "The Government of India (Commencement and Transitory Provisions) Order 1936" His Majesty has ordered that the provisions of the Act, other than those relating to the Federation of India, the Federal Railway Authority, the Federal Court and the pay etc of the Commander in Chief, shall come into force on the 1st of April 1937, while the provisions relating to the Federal Railway Authority and the Federal Court shall come into force on a date to be appointed by his Majesty in Council, and those relating to the pay etc of the Commander in Chief shall not come into force until the establishment of the Federation. It may be noted that the Federal Court and the Federal Railway Authority shall come into existence, notwithstanding that the Federation has not yet been established.

*Constitution of Orissa and Sind*

Though the provisions of the Act regarding the administration of provinces are to come into force on the 1st of April 1937 the provinces of Orissa and Sind have already been constituted as separate provinces by Order in Council entitled the Government of India (Constitution of Orissa) Order 1936 and The Government of India (Constitution of Sind) Order 1936 respectively whose provisions came into force on the 1st of April 1936. The new Province of Orissa has been composed of the Orissa Division of the earlier Bihar and Orissa province certain areas transferred from the Madras Presidency and certain areas transferred from the Central Provinces.

*Grants in aid to certain Provinces*

An Order in Council entitled The Government of India (Distribution of Revenue) Order 1936 has provided for making grants in aid to certain provinces as follows —

(1) The United Provinces Rs 5 lakhs in each year of the first 5 years from commencement of the part of the Act relating to provinces

(2) Assam Rs 30 lakhs in each year

(3) The North West Frontier Province Rs 100 lakhs in each year

(4) Orissa Rs 47 lakhs in the first year after commencement of the part of the Act relating to provinces 4 lakhs in each of the succeeding 4 years and 4 lakhs in every subsequent year

(5) Sind Rs 110 lakhs in the first year after commencement of the part of the Act relating to provinces 105 lakhs in each of the succeeding 9 years 80 lakhs in each of the next 20 years 65 lakhs in each of the next 5 years

60 lakhs in each of the next 5 years and 55 lakhs in each of the next 5 years

The grants will be charged on the revenues of the Federation

*High Court at Nagpur*

A High Court of Judicature has been established at Nagpur by Letters Patent this year (1936).